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"This is written in response to your request that we submit information in regard to the activities of Harriman, Ripley & Co., Incorporated in the investment banking business pertaining to the issue of corporate securities."

Do you recall when that request was made of you by the Cahill firm?

A. No, I do not specifically recall.

Q. Can you tell me whether or not it was before you had commenced preparing Part II of this report?

A. I am reasonably certain that it was after we commenced preparing Part II.

Q. Was it after Part II was completed?

A. I don't recall.

Q. Can you remember whether the request made of you was in writing or was an oral request?

A. I cannot recall, but I believe it was oral.

[Tr. 3866] Q. Do you remember the circumstances under which the request was made?

A. Not specifically, no.

Q. Do you remember who, in fact, made the request?

A. No, I do not.

Q. Do you recall when you signed this letter which is dated May 2, 1966, in Part I of your report?

A. It was signed, I believe, the date as of which it is dated, May 2nd.

Q. Would you look at Part II of the report, page 11? You will note that the first sentence there commences:

"This report is written in response to the request of Cahill, Gordon that we give our opinion . . ."
et cetera.

Do you remember when that request was made?

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A. I cannot give you a specific date, but it was made approximately three and a half years ago, when we were first approached and requested to consider assuming this task.

Q. Who in your firm was approached, if you recall?

A. Well, there were present at the initial meeting Mr. Ripley, myself, Mr. H. J. Berry. I believe that is all.

[Tr. 3867] Q. Can you tell me what Mr. Berry's position was with your firm at that time?

A. At that time, he was executive vice president.

Q. What was your title at that time?

A. It was either vice president or senior vice president. I have forgotten which.

Q. Where was that meeting held?

A. In Mr. Ripley's office at our then corporate headquarters, 63 Wall Street.

Q. Who, other than representatives from your firm, were present at the meeting?

A. Either two or three partners of Cahill, Gordon.

Q. Can you recall who they were?

A. I could only recall, I think correctly, Mr. Sonnett.

Q. Was there any representative from TWA present?

A. No, there was not.

Q. The request which you referred to at the top of page 1, was that oral or was that in writing?

A. It was oral.

Q. Can you tell me, as best as you can recall, the substance of the conversation that took place at this initial meeting?

A. Well, it's my recollection that there was a [Tr. 3868] brief description of the status of the particular lawsuit in regard to which these damage hearings were being held, and there was then a request of us to give consideration to writing this particular type of report.

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Q. Can you recall what was told to you about the purpose of this report?

A. Yes. The purpose, as described to us, stated to us, was that the report would be used as an aid in establishing the amount of the damages which had been sustained by the airline as a result of the alleged—I guess as a result of the acts of the defendants.

Q. Was anything said to you at that point about the amount of those damages?

A. I do not recall.

Q. Do you know whether or not the Cahill firm approached any other investment banking house to enlist their support in this project prior to the time that you were approached?

A. I do not know.

Q. Do you know what investment banking firm was advising TWA at the time that you were approached by the Cahill firm?

A. It's my understanding that Dillon, Read, the firm of Dillon, Read has been the lead investment banking [Tr. 3869] firm advising TWA in recent years, but that is merely my understanding. I do not know that as a fact.

Q. During the course of the preparation of your report, did you have conversations with any representatives of Dillon, Read?

A. No.

Q. How long after this first meeting, which you have described to us, did you consider this proposal before coming to the conclusion that your firm would undertake it?

A. I do not recall exactly, but I believe several days.

Q. Do you recall whether or not there were any people in your firm who were opposed to undertaking this project?

A. I do not recall.

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Q. Is it likely that you would recall if there had been any serious opposition to it?

A. Yes, I believe it is.

Q. Was there a formal letter of retainer?

A. I can't recall, but I can have that checked.

Q. Do you consider that Drexel, Harriman, Ripley was employed by the Cahill firm or by TWA to undertake this report?

A. I consider that we were employed by Cahill, [Tr. 3870] Gordon.

Q. Can you tell me approximately when the work commenced on this report?

A. Yes, it commenced almost immediately after we were —after we agreed to take on the task.

Q. Your best estimate is that that is approximately three and a half years ago?

A. Approximately.

Mr. Leisure: Off the record.

The Special Master: Off the record.

(Discussion off the record.)

Q. Over what period of time did that work continue until the report was completed?

A. Well, it continued intermittently throughout the entire three and a half-year period.

Q. When do you consider that the report was completed?

A. Immediately prior to the date of its submission.

Q. Is that May 2, 1966?

A. Approximately.

Q. Is that the date that you considered it submitted?

A. Yes, it is.

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[Tr. 3901] • • •

Q. I asked on whom is the obligation.

A. The obligation would be on management.

Q. Does this suggest that management should have accepted these recommendations which are contained in your report?

A. I believe so.

Q. Does that mean there is no other way to finance than the method proposed by you?

A. No, we have so stated that we believe that this is a perfectly reasonable, practical method and the one way in our opinion we would have suggested.

Q. Do you assume that TWA would have accepted this recommendation?

A. We do not.

Q. Did you make any inquiry with respect to the names of the investment bankers who were actually advising TWA during the period 1955 through 1960?

A. We made no such inquiry.

Q. Is it fair to say then that for the purposes [Tr. 3902] of this report, you disregarded any advice that may have been given to TWA by any investment banker during the period 1955 to 1960?

A. We gave no consideration to any such advice because we were not aware of any such advice.

Q. Are you saying anything more than that this report constitutes one method by which TWA could have financed these projected requirements, assuming it had retained you in 1955, and assuming that it accepted your advice?

A. I believe that's a reasonable statement.

Q. At the top of page 3 of the report, you indicate that you are assuming that you were engaged by TWA as its investment banker throughout this period.

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When do you assume that you were engaged?

A. Well, some time early in 1955. I don't know the precise—that we assumed the precise date, but obviously if we had done an equity financing in May we would have been working for some months with the airline.

So, early 1955 is the best I can give you.

Q. You do not make any assumption with respect to the precise time that you were engaged to undertake this project?

[Tr. 3903] A. Not a precise day or a week, no, sir.

Q. If in point of fact TWA was using a different investment banker in early 1955, you are not assuming that that is a reflection on the competence of the management, are you?

A. No, I am not.

Q. Did you make a study of the actual financing steps that were undertaken by TWA throughout the period in 1955-1960?

Mr. Sonnett: Is TWA in the context of these questions inclusive of Mr. Hughes and the Tool Company or is it meant to be TWA without regard to those two? Because—

Mr. Leisure: It is meant to be TWA unless I indicate otherwise.

Mr. Sonnett: There is nothing in the complaint which indicates that TWA had any power to do anything about its own financing in the years in question and by the default that is precluded. The entire responsibility was in the hands of the defendants.

Mr. Leisure: I consider that to be a summation, your Honor, not an objection to the question.

[Tr. 3904] Mr. Sonnett: It is in the complaint and it is established by the default.

The Special Master: Is there a pending question?

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Will you read it, please?

(The question was read.)

The Special Master: If you wish to make any statement as to what you mean by TWA you may do so.

Do you feel that you can answer this question as it stands?

The Witness: Yes, sir, I believe I can.

A. Well, I would say that we are in no—we are in no position to study the financing steps that were taken by TWA because we don't really know what all of such steps may have been.

We are generally familiar with the terms of the equipment mortgage. We are aware of the common stock financing.

But we were in no position to undertake a study of the method by which TWA was financed during that period.

Q. Are you saying that the details with respect to the TWA financing were not available to you?

[Tr. 3905] A. Only as set forth—not the details. I wouldn't consider these the details.

The general outlines of the steps taken by TWA during the period were described in its annual reports, for example. But we have no knowledge of any other—of any negotiations that may have been undertaken that are not described in the annual report.

Q. Did you make a request to see the financial records of TWA which might still exist which reflect what had been happening from 1955 to 1960?

A. I do not recall any such specific request, but we do have either as a result of our own records having this kind of material or having received it from Cahill, Gordon, we have copies of the various pertinent documents such as the

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equipment mortgage and the prospectus and that type of thing.

We do not have any record of internal plans that may have been discussed or formulated with regard to financings.

Q. Did you make any inquiry with respect to the advice that may have been given TWA which led to its refinancing with Equitable in December of 1954?

A. I do not believe so.

Q. Do you know what investment banking house was [Tr. 3906] advising TWA at the time of that refinancing in the summer of 1954?

A. I believe it was Merrill Lynch.

Q. Did you assume that the advice that may have been given to TWA which led to the refinancing in December 1954 was bad advice?

Mr. Sonnett: There is nothing in the record showing that any such advice was given to TWA. Unless the witness is in a position to testify that he knows about that advice, it seems to me this is highly argumentative.

Mr. Leisure: I am just predicating my question on the former response of the witness that he believed that advice was given by Merrill Lynch.

The Witness: I did not answer—I don't believe that's the way I answered. I don't believe the question was, was advice given. I believe you asked me who the investment banker was that was representing TWA in those days, and I said I believed it was Merrill Lynch. I have no knowledge of any advice given to the airline by Merrill Lynch.

Mr. Sonnett: I might say, Mr. Brownell, [Tr. 3907] this persistent use of advice to TWA in light of this

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record is certainly a little disingenuous. The record is quite clear and that record is not open for review now but it was Hughes who was running all the financing end of this thing and calling all the shots. This persistent use of TWA flies in the face of history.

Mr. Leisure: I will note an objection again to the instant summations that we get from time to time. Many of these questions are not yet determined and that's why we are here.

Mr. Sonnett: If you look at the complaint and re-read it you will find that that question is determined.

The Special Master: I will consider the whole record in coming to any conclusion of my own.

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[Tr. 3920] * * * Q. So that by your assumption of ordered, you are assuming that the order would have indicated delivery positions?

The Special Master: Delivery dates.

Mr. Leisure: Yes—

The Special Master: You are not distinguishing between the delivery positions—

Mr. Leisure: No, the delivery dates, the anticipated delivery dates.

A. Yes, I believe that our assumption would include such an anticipation.

Q. Then the last part of the sentence indicates that you are assuming that 30 Convair aircraft could and would have been ordered by such management in 1956 for delivery in 1960.

When in 1956 do you assume that the order for the Convairs would have been placed?

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A. Well, it is my recollection that the order by Hughes Tool was placed in September, 1956, and I believe that that is the month that we assumed the order would have been placed under the assumptions set forth here.

[Tr. 3921] Q. Can you tell me when you assume you as the investment banker would have learned that TWA was going to order 30 Convairs?

Mr. Sonnett: The answer to that would be never. I wish we could for the sake of the record either not refer to TWA at all or if you refer to the ordering refer to it correctly. It invites colloquy from me and it wastes time.

Mr. Leisure: We are talking about an entirely hypothetical world here and I am now in the witness' hypothetical world and I am asking him when he assumes in his capacity as an investment banker that TWA would have ordered the 30 Convairs.

The Special Master: He gave that answer. Now you are asking him a separate question.

Mr. Leisure: He has not yet with respect to the Convairs, your Honor. He did with respect to the Boeings.

The Witness: I said September.

By Mr. Leisure:

Q. September is when they were ordered, I understand. My question is when you as the investment banker [Tr. 3922] would have learned that they were going to be ordered.

A. We made no such specific assumption, but since the ordering of that amount of aircraft involved a substantial capital expenditure, I think it is a fair presumption that as the company's investment banker we would have been in-

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formed reasonably a short period of time before the ordering of the equipment but we made no specific assumption.

Q. Your financing plan as I understand is designed to pay for these aircraft and I would like to know when you have assumed that you knew that such a requirement existed.

A. I just answered the question.

Q. You said reasonably in advance of the order.

Can you do any better than that?

A. No, I cannot.

Q. Are you assuming that if historical TWA did not, in fact, order the aircraft in the number and buy the type indicated at page 1 of your report that historical TWA had incompetent management?

A. We made no such assumption.

Q. At page 3 of your report, at the top of the page, part of your assumption is that you were in intimate and direct contact with the management of TWA and had [Tr. 3923] access to all current information and data having a bearing on finance.

What current information and data were you referring to there?

The Special Master: By way of general type?

A. Well, the usual—certainly, the—all of the published reports, quarterly reports. Airlines have to file considerable information with the regulatory authorities on a more direct basis than quarterly. I presume we would have had access to that type of information.

That's in general the kind of information we are referring to.

Q. Was that information, in fact, given to you during the course of your preparation of this report or are you merely assuming that you would have had it had you been advising them in 1955?

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A. On a reconstructed basis, that information was made available to us, yes.

Q. What do you mean by reconstructed basis?

A. I mean that the Price Waterhouse reconstructed quarterly reports would have been available to us—were available to us.

[Tr. 3924] Q. No Price Waterhouse reconstructed data would have been classified as current information and data in TWA files in 1955, would it?

Mr. Sonnett: I thought we were talking about the hypothetical free TWA in this whole line of questioning.

Mr. Leisure: I am trying to determine whether he is making the statement as an assumption which we did determine and then I am trying to find out whether the very data that he refers to in his assumption was in fact made available to him.

Mr. Sonnett: What he has testified to is that the same or similar data would have been available. I don't understand this jumping back and forth between the actual—

A. I don't understand whether you are referring to historical or reconstructed.

Mr. Sonnett: That is the problem.

Q. I am referring to the assumption that you made at page 3 that you would have had access to all current information and data having a bearing on finance.

I am trying to find out whether in fact you did.

The Special Master: Whether you did have [Tr. 3925] historical information of that same type?

Mr. Leisure: Right.

Mr. Sonnett: In fact, when this report was prepared.

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The Special Master: In fact?

Mr. Leisure: Right.

A. Forgive me if I sound evasive. I don't mean to be.

I—the assumption is—the reconstructed data that we have used in arriving at the program here is the kind of information, financial information that we are referring to here in this paragraph, and that we have. That was made available to us, yes.

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[Tr. 3926] * * * Q. Mr. Morehouse, at page 3 of your report, you make the assumption that you were engaged by TWA as its investment bankers through the 1955 to 1960 period.

Is that an assumption that was given to you by the Cahill firm?

A. Yes, sir.

Q. Do you feel you needed to make such an assumption in order to give your opinion as to how TWA could have financed this assumed purchase of aircraft?

A. I don't know—no, I do not believe it is a necessary assumption, but it seems to me it is a logical assumption.

Q. Would your report have been any different had you not made that assumption?

A. I don't know, because we didn't consider it, but I doubt it.

[Tr. 3927] Q. Would you turn to page 5 of your report? We have a Chapter IV entitled "Premises and Assumptions."

Do you draw any distinctions between a premise and an assumption?

A. Not really. I believe the expression is used collectively, premise and assumption.

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Q. In No. 1 of Chapter IV, page 5, you adopt certain assumptions with regard to figures prepared by other experts; is that right?

A. That's right.

Q. In paragraph No. 2 on page 5, you refer to the foregoing assumption by Cahill, Gordon.

Were all of the assumptions on pages 5 and 6 given to you by Cahill, Gordon?

A. Excuse me. I will have to check it.

Mr. Williams: Read the question, please.

(The question was read.)

Mr. Williams: It is all of the assumptions on 5 and 6.

The Witness: Yes, they were.

Q. At page 61 in paragraph numbered 5, you make a reference to on-time delivery of the 63-plane fleet. What do you mean by that?

A. I mean that the proceeds from the sale of piston [Tr. 3928] aircraft would have been as reconstructed, assuming that the jet fleet was delivered in accordance with the reconstructed delivery dates that have been set forth in the exhibit we looked at earlier this morning.

Q. Do you make an assumption that the jets which were, in fact, received by TWA were received late?

A. I don't understand that question.

Q. When you make a reference to on-time delivery, I am wondering whether there is an implication that in point of fact you assume that TWA received jets late.

Do you make any such assumption?

A. We make no such assumption.

Q. Do you know where the phrase "on-time" delivery originated?

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A. I do not know where it originated.

Q. Do you know where you got it from?

A. I do not know that we got it from anywhere. I believe we may have used the expression "on-time" as a synonym for the word "timely," which "timely" word is used in that exhibit which we looked at earlier today.

Q. Is that TWA 14?

A. I believe so.

Q. Do you know whether or not TWA 14 annexed to your report is founded upon the exhibits attached to [Tr. 3929] Mr. Rummel's testimony?

A. I do not know that.

Q. At the bottom of TWA 14, there is an indication that the source is the testimony of R. W. Rummel and exhibits and annexes.

Does that refresh your recollection?

A. It doesn't necessarily—it doesn't refresh my recollection, but I believe it is obvious from the source that the answer to your question is yes.

Q. Did you participate in the preparation of Mr. Rummel's testimony or any of the exhibits or annexes attached thereto?

A. I certainly did not participate in the preparation of Mr. Rummel's testimony. And I do not believe in connection with—I do not believe that we participated in any way in the preparation of any of the annexes or exhibits, but without seeing them all again, I couldn't swear to it.

Q. Do you recall Annex D and Annex F to Mr. Rummel's testimony?

A. No, I do not.

Q. I wonder if you would take a moment to look at the statement prepared and submitted by Mr. Rummel, which was marked Plaintiff's Exhibit TWA 2 in evidence, and [Tr. 3930] look at Annex D and Annex F.

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I am asking you to look at it only for the purposes of answering the question as to whether or not you participated in the preparation—

A. No.

Q. (continuing) —of either.

A. We did not.

Q. That applies to other people employed by Drexel, Harriman, Ripley?

A. That is right, sir.

Q. Did you make any independent study to verify or substantiate either Annex D or Annex F to Mr. Rummel's statement?

A. No, we did not.

Q. Referring again to paragraph numbered 5 at page 6, with respect to the reconstruction prepared by R.D.S., did you make any independent study to verify the reconstruction prepared by R.D.S.?

A. No, sir.

Q. Is it fair to say that if the inputs to your study, such as these reconstructions by R.D.S., Price Waterhouse and Coverdale & Colpitts had been altered, that it might have resulted in an altering of the report which you have tendered?

[Tr. 3931] A. I don't believe I can answer that without having a specific example of the extent of the alteration.

Q. If, for example, either the timing of the ordering of the assumed jet fleet or the number of planes that you assumed would have been ordered had been altered, might that have altered your financing plan?

A. Once again, without being specific as to number—numbers of aircraft, or specifics as to timing, I don't see how I could answer that question.

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Q. Do you think that if you had been told to assume that TWA would order 45 jet aircraft instead of 63, that that might have altered your approach to this financing problem?

Mr. Williams: Would have altered his approach to the financing problem?

Mr. Leisure: Yes.

A. I doubt that it would have altered the approach.

Q. So that the number of planes which were given to you as an assumption has no effect on the approach to your financing plan?

A. No, I didn't say that. Certainly, it does, but the amount of alteration in the number and again—and in the timing, certainly would have to be spelled out for me to comment whether it would alter the approach.

[Tr. 3932] Q. If there was a reduction of the number of jet aircraft which you were to assume TWA would order, might that alter the amount of money that you recommend raising at the various stages in your financial report?

A. Yes, it might.

Q. If, in point of fact, you were told to assume that these aircraft were ordered in 1956 instead of in 1955, might that have altered the timing of the various steps that you recommend in this financing program?

A. It might, but not necessarily.

Q. Other than the assumptions which you have stated at one place or another in your report, are there any other assumptions which you made which are not so reflected?

A. I do not believe so.

Q. Did you assume that three-quarters of the stock of TWA was held by the Hughes Tool Company during this period?

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Mr. Williams: Was that a necessary assumption to this calculation?

Mr. Leisure: I have no idea. I just asked him whether he assumed it.

A. It is not set forth as one of our assumptions; so my answer would have to be no.

[Tr. 3933] Q. You mean that you assumed that there was no majority shareholder when you devised this financing plan?

A. We assumed neither that there was nor that there wasn't.

Mr. Leisure: I think we are going to have a more satisfactory answer than that, your Honor.

Q. Did you ignore Toolco in devising this plan or did you assume when you formulated each of these financing steps that TWA was, in fact, a subsidiary of another corporation?

A. We did not assume that it was a subsidiary, but we did not assume that it was not a subsidiary.

Q. As I understand it, your first step in financing is a one-for-one rights offering; is that correct?

A. That's right, sir.

Q. You would have to know if you were advising a corporation who the shareholders were before you decided upon a one-for-one rights offering, would you not?

A. The answer to that question would be not necessarily.

Q. In the event that a corporation stock was three-quarters held by a majority shareholder and you [Tr. 3934] deemed it appropriate to have a one-for-one rights offering, would you be expected to inquire as to whether or not that majority shareholder would take up its proportionate

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share of the one-for-one rights offering before you went any farther with the plan?

A. Yes, we would, certainly.

Q. I come back to my question. Did you assume, in devising this financing plan, that the stock of TWA was, in fact, held in the percentage of 74.35 per cent by another corporation?

A. Well, I have already answered the question. That is not one of our assumptions.

Q. Is it true, sir, that if you had assumed that three-quarters of the stock of TWA was held by another corporation, you might have embarked upon an entirely different financing program than the one that you here suggest?

A. No, it is not.

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[Tr. 4399] . . . Mr. Leisure: All right, I don't really care how it is marked.

May we mark it Defendants' Exhibit 202 for identification?

(Copy of letter dated September 10, 1963 from the Cahill, Gordon office to Mr. Ripley, marked Defendants' Exhibit 202 for identification, as of this date.)

Q. First of all, Mr. Morehouse, do you recognize Defendants' Exhibit 202 for identification?

A. I recognize it as something that was shown to me the other day at the same time as it was handed to you people.

But I do not recall having seen this prior to having it shown to me the other day.

Q. As of September 10, 1963, were you working on this assignment from Cahill along with Mr. Ripley?

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A. Yes, sir, but in a less active capacity than I later assumed.

Q. Do you have any recollection of the Item No. 1 in the letter which is a tabulation of changes in the top management of TWA from 1963 to date?

[Tr. 4400] A. I may have seen it, but I do not recall it.

Q. Do you remember any conversations with Mr. Ripley as to why your firm wanted such a tabulation?

A. I do not recall any specific conversation.

Knowing Mr. Ripley, however, I would expect that he would request anything and everything that might possibly be of interest in this matter. I do not believe that it meant one thing or another in his mind. I couldn't possibly comment.

Q. After this tabulation was received in your office, did you, in fact, interview Mr. A. V. Leslie, who was a vice president, finance, of TWA during the period with which your report was concerned?

A. I did not, no, sir.

Q. Do you know whether anyone in your firm interviewed Mr. Leslie?

A. I do not know.

Q. Did you interview a Mr. E. O. Cocke after receiving this tabulation?

A. I did not and have no knowledge of anyone in my firm so doing.

Q. Did you interview a Mr. John A. Collings?

A. No, sir.

Q. Did you interview a Mr. Ben F. Sessel who is [Tr. 4401] still a director of TWA, as I understand it?

A. The same previous answer. I did not and I have no knowledge of any such interview by anyone in our firm.

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Q. Would you give the same answer with respect to Mr. Warren Lee Pierson?

A. Yes, sir.

Q. The same answer with respect to a Mr. Thomas A. Slack?

A. Yes, sir.

Q. Item No. 4 seems to be documents pertaining to both the 1959 and 1960 plan suggested by Dillon, Read & Co. I think at one time earlier in the transcript you indicated that you did not have access to the actual financing plans undertaken by or suggested to TWA during this period.

Do you know whether you ever saw the documents which were enclosed with this letter and referred to as Item 4?

Mr. Williams: I don't think that is an accurate summary of what the witness has said.

Mr. Leisure: I want to be accurate.

The Special Master: Why don't we just ask the witness without reference to past testimony?

[Tr. 4402] Q. Do you recall whether or not you had access to the documents identified as Item 4 in Defendants Exhibit 202 for identification?

A. I believe that these documents are in our files. I have never read them.

Q. Do you make an assumption in connection with your report, your written report, that any plan formulated by Dillon, Read was imprudent in any fashion?

A. I make no such assumption.

Q. Do you make any such assumption with respect to any plan or advice by Merrill Lynch to TWA during the period 1955 through 1960?

A. We make no such assumption.

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Q. Do you make an assumption with respect to the actual financing that took place by TWA throughout the period 1955 through 1960 was in any way imprudent or improper?

Mr. Williams: Historical financing?

Mr. Leisure: Yes.

A. We made no such assumption in preparing our report, no, sir.

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[Tr. 4412] . . . Q. We have finally reached the last page of the report and I would ask you to turn to page 75, Mr. Morehouse.

Mr. Williams: I hope it is the last page of your questions, too.

Q. I ask you to direct your attention to the last paragraph of the report. I will read it quickly into the record, if I may.

"We do not wish this report to be interpreted as meaning that we think the financing program recommended herein is the only program by which TWA might have been successfully financed to meet the Question Posed. There may well be other programs by which TWA might have been financed successfully in the period under review. As for the program which we have outlined, we believe that it is the one which, in our opinion, we would have recommended if we had been advising TWA in the years 1955-1960, and one which, if adopted, [Tr. 4413] would have succeeded."

Do you remember whose idea it was to put that last paragraph in your report?

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A. Yes, I remember quite distinctly that throughout the preparation of this report we have—"we," being Harriman Ripley—Mr. Ripley and myself have never felt that the program which we evolved was meant to be the only program of finance which could have accomplished the task described to us, and we felt it important to so state.

Q. Is it true that if an alternative method of financing to meet the question posed resulted in a recommendation for borrowing at different times during the period, there might also be a difference in the interest rates which TWA would have been charged on the borrowing?

A. Yes, that is true.

Q. Is it also true that if the timing of any proposed equity financing were altered that the amount of money which could reasonably be expected to be raised might be altered depending upon the then current market conditions?

A. I believe that is correct.

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[Tr. 4427] . . . Mr. Leisure: May I move to one other area?

The Special Master: Yes.

Q. At page 4245 of the transcript, I asked this question your Honor.

"Mr. Morehouse, did any other airline, to [Tr. 4428] your knowledge, arrange borrowing in anticipation of buying jets as early as October 1955?"

Can you respond to that?

A. Yes, sir, it is my recollection that—now, having reviewed the record that Pan American arranged financing in 1955.

Could I look at the exhibit, please?

Morehouse—Cross

Mr. Tenney: Do you have your exhibits with you, Mr. Morehouse? Do you have your copy of the report with you?

The Witness: No, I don't believe I do.

Well, Exhibit Pan American 3 is a digest of a Pan American insurance loan agreement dated May 10, 1955, pertaining to \$60 million debt financing which was arranged for as of that date and was available to Pan American until July 1, 1956.

Q. Is it a fact that the stated purpose of that borrowing was to purchase seven DC-7Bs and 33 DC-7s and the remainder to go into working capital?

A. I do not recall.

Q. You will note that my question did refer to the buying of jets.

Can you tell me whether there was any airline which arranged borrowing before October 1, 1955 in [Tr. 4429] anticipation of purchasing jets?

A. Well, I do not agree—excuse me. I believe that this Pan American borrowing at that time could very well fall under your description of a borrowing arranged in anticipation of future acquisition of jets.

Q. What is your basis for that statement?

A. Well, the future need, capital needs of any airline as of any time in 1955, total capital needs, included capital to meet both payments on piston engine equipment then on order—

Q. When on order?

A. At the time—could I finish my sentence? Maybe I should start over again.

The major airlines, certainly those which we have used for purposes of comparison in our report in 1955 had considerable amounts of piston engine equipment still to be

Morehouse—Cross

received and to a considerable extent still to be paid for in the years immediately following 1955, just as did TWA.

Our total projected capital expenditure program which the financing was designed to meet included substantial sums to pay for piston engine equipment for TWA. And I believe that Pan American in arranging the \$60 million in financing in May of 1955 certainly had in [Tr. 4430] mind that this would be only a part of a total financing during the next few years, which total financing would be arranged to meet all of its capital expenditures during this period.

Q. Pan American did, in fact, borrow money in the next few years to make payments on jets, did it not?

A. I believe it did but I cannot recall precisely the financing history of Pan American during this period.

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Morehouse—Redirect

[Tr. 4433] * * * Q. The next principle set forth in this section, Mr. Morehouse, is that an airline should own its own equipment rather than lease it from other parties.

In the course of your testimony on this subject, a good deal of attention was directed to the relative financial advantages of leasing and ownership to the users of the equipment.

On this point I would like first to ask you, Mr. Morehouse, whether, in your opinion, the difference between owning and leasing an airline's principal flying equipment can be adequately considered in terms of the relative cost to the airline of ownership and leasing.

A. My answer to that is no, Mr. Tenney.

I tried to point out during the course of my testimony that in my opinion, there were certain major benefits of ownership which might not be readily apparent on a balance sheet or an income account of a [Tr. 4434] particular company.

Q. Would you explain what you mean by that, Mr. Morehouse?

A. Well, primarily it gets me back to the subject of—and the importance of this subject in our opinion—the subject of control of one's principal income producing properties.

As I recall, I used the example of a steel company and pointed out that whereas it is one thing for a steel company to lease office facilities, for example, but it would be quite another thing for a steel company to lease all or a major part of its steel producing facilities.

If something were to happen which resulted in the steel company having to on reasonably short notice find additional office space, it could probably be found without any great penalty to the steel company, whereas if the same

Morehouse—Redirect

development were to occur with respect to its major manufacturing facilities or one of its principal plants, it might be years or at least a long period of time before another such manufacturing facility could be obtained.

So, it seems to me, the same principle particularly applies to an airline where it is vitally important [Tr. 4435] from a competitive standpoint that the airline have at all times the ability to keep control of its principal income producing properties, particularly under the conditions which exist in the airline equipment field where the availability of equipment, the most modern, the most efficient equipment and the control thereof is vitally important.

If an airline were to suddenly lose certain of its equipment, particularly if such equipment were to represent the latest most efficient equipment, it might find it very difficult to find and obtain a substitute therefor so as to maintain its competitive position.

There is another aspect of rentals which I believe is important, and that is their effect upon the credit of a borrower.

Generally speaking, a lender would not consider that a proposed borrower having substantial lease obligations, rental obligations pertaining to its principal income producing properties as good a credit as another borrower not having such rental or lease obligations.

Most indentures covering debt securities contain severe restrictions, in some cases prohibitions, against a borrower entering into substantial lease [Tr. 4436] obligations.

Q. Are there differences from one lease to another that might affect the generality of the application of those principles, Mr. Morehouse?

Mr. Leisure: If your Honor please, I am going to note an objection on the ground that this line of

Morehouse—Redirect

questioning results in repetitive testimony. On two or three occasions the witness has come in with no objection by me and volunteered an explanation of prior testimony.

He has been asked from time to time during the examination to elaborate or explain testimony and he has never once been shut off.

I think this entire line of questioning results in a complete rehash and nothing but repetitive testimony.

The Special Master: There is something to that. I will keep it in mind as we go along. I will allow this particular question.

Mr. Tenney: Would you read—

A. Yes, I remember the question and I would like to add the comment that certainly the extent to which rental obligations in our opinion are objectionable would depend—or would be influenced by the terms of [Tr. 4437] these—the lease covering such rental obligations.

To the extent that the lease by its terms gets closer to being an arrangement whereby the renter of the equipment does maintain a considerable degree of control, then obviously they would be less objectionable.

I believe I previously mentioned that in my opinion a day to day type lease would be the furthest from such—furthest from an example of a lease which might give the lender—give the user of the equipment a reasonably large degree of control.

There are other advantages in our opinion to ownership rather than leasing. In the nature of financial advantages, the use of the depreciation moneys generated by ownership, which, of course, are not available when you have

Morehouse—Redirect

renting, the fact that the—well, I think that's sufficient to answer that question.

Mr. Tenney: I will turn to a new subject, your Honor.

[Tr. 4438] Q. You have testified on several occasions in the course of Mr. Leisure's examination that in preparing this report you neither assumed nor did not assume that TWA during the period under question was a single holder of approximately 75 per cent of its outstanding capital stock.

I am summarizing a number of comments.

Will you tell me what assumption you made and what the source of the assumption was as to financial assistance during this period to TWA from Hughes Tool Company?

A. Well, we were advised by Cahill, Gordon that we could not assume, for the purposes of our report, that the airline could look to Hughes Tool Company or to any 75 per cent stockholder for financial assistance.

The Special Master: Is that a change in your prior testimony?

The Witness: No, sir, I do not consider it so.

The Special Master: I don't quite get that because I thought you made it clear that you did not assume it one way or the other. Now you are saying that you did assume that there would be no [Tr. 4439] financial assistance.

The Witness: Well, maybe I should restate my answer.

We were advised by Cahill, Gordon that we could not assume that TWA could look to Hughes Tool or any major stockholder for financial assistance.

I don't think that that conflict with—

Morehouse—Redirect

The Special Master: Does that mean that you assumed that there would be no assistance from major stockholders, financially, in any of this financing program?

The Witness: That's what it means, yes, sir.

The Special Master: I got a different impression from your prior testimony.

Mr. Tenney: Perhaps I can clarify it with a couple of more questions, Mr. Brownell.

Q. How was TWA to finance its program?

Mr. Leisure: I don't understand the question, your Honor.

The Special Master: I don't either, but we will allow the answer and see—

Q. Will you restate—

[Tr. 4440] The Special Master: —subject to striking.

Q. Will you restate the question which you were investigating in the course of preparing this report?

A. Well, the question was whether in our opinion TWA out of its own resources could finance this capital expenditure program. And we were advised that TWA—we were advised that we could not assume that TWA would have financial—could look to the Hughes Tool Company for financial assistance.

The Special Master: Would you still make the same answers to Mr. Leisure's question of a few moments ago that if you had known that Hughes was going to take up its share of the financing as I understood you to say it would not have made any

Morehouse—Redirect

difference in your recommendation? Would you still stand on that?

The Witness: I think I'd have to know which specific question of Mr. Leisure's that you are referring to, Mr. Brownell.

The Special Master: The hypothetical question.

The Witness: The first one?

The Special Master: Yes, the first one say.

[Tr. 4441] The Witness: I would certainly still stand on that answer, yes, sir.

By Mr. Tenney:

Q. Is there anything inconsistent with your assuming that TWA could not count on financial assistance from a 75 per cent stockholder with a 75 per cent stockholder participating in any appropriate portions of your financial program?

Mr. Leisure: I object to the form of the question.

The Special Master: Do you want to try and rephrase that?

Q. Mr. Morehouse, there seems to be some confusion here, I think, as to what you mean by your answer to the last few questions.

Would you comment on whether a corporation which has a major stockholder needs to rely on assistance from that major stockholder in order to develop its own financial program?

A. Well, we assume that the subject corporation, the subsidiary corporation—

Mr. Tenney: Mr. Brownell, I think my last question has simply added to whatever confusion exists. Maybe I might try again.

Morehouse—Redirect

[Tr. 4442] The Witness: It certainly has with me.

The Special Master: That makes it unanimous, I guess.

Q. Would it be inconsistent, Mr. Morehouse, with the program that you have set forth in your report for a 75 per cent stockholder, if there was one, to take up its proportionate share of the offering?

Mr. Leisure: I have the same objection as to form with this consistency. I don't know whether he is an expert on consistency or not, but I think the question is objectionable in that form.

Mr. Tenney: The offering was made in May of 1955 and that is the offering I am referring to, if that is the objection he is making.

Mr. Leisure: I am objecting to asking whether things are consistent. That does not seem to me to be a proper way to frame a question.

Mr. Tenney: I will reframe the question. We are really only trying to get clarification, I think, of a very simple point.

Q. Have you assumed in the preparation of this report that a 75 per cent stockholder, if there was one, was precluded from taking up its proportionate share [Tr. 4443] of the preemptive offering that you have recommended in May of 1955?

A. We have not.

Q. Would there be any change in the program which you have recommended if a 75 per cent stockholder, if there was one, had participated in proportion to its stockholdings in that or any similar preemptive offering?

A. No, sir.

Morehouse—Redirect

The Special Master: I think that is probably enough to clarify it.

I will state what my understanding of the testimony is and then if counsel on either side want to comment or certainly if the witness wants to correct my impression, he is welcome, but I have understood that in preparing the report you did not take into consideration whether or not a controlling stockholder would have made any financial commitment in connection either with the equity or the debt financing. And when you were asked whether your report would be changed if there had been such a binding commitment from such a major stockholder to take up its full share on a preemptive offering you said that would not change your report in any respect.

[Tr. 4444] That's my understanding of the substance of the testimony.

Mr. Tenney: That's my understanding of the testimony, too, unless Mr. Morehouse wishes to change it.

The Witness: No, I don't want to change it.

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**Excerpts From Testimony at Damage Hearing
of Edward L. Wemple**

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[Tr. 4495] Q. Those are all the people in the Cahill firm with whom you had discussions of one kind or another in the course of the preparation of your report?

A. Those are the ones that I can remember at the moment. There may have been others.

Q. Did you, in the course of the preparation of your report, consult with any TWA personnel?

A. Yes, sir.

Q. With whom?

A. James Cotter, George—

Q. Would you identify who he is, please?

A. James Cotter is in the Finance Department.

George Miller also in the Finance Department.

Jerry Himmelberg, also in the Finance Department.

Q. You had better spell that.

A. Himmelberg, H-i-m-m-e-l-b-e-r-g. I think the first name is Jerome.

Robert O. Jones, also in the Finance Department.

Vernon Ratcliff—

Q. Would you spell that, please?

A. R-a-t-c-l-i-f-f, if my memory serves me correctly.

Q. Is he in the Finance Department also?

A. No. He is Schedules and Planning.

[Tr. 4496] Mrs. Jean Valensky, also Schedules and Planning.

Q. Would you spell that, please?

A. V-a-l-e-n-s-k-y. Some people in Kansas City: Mr. R. W. Chambers. He is also in the Finance Department. Mr. John Tucci, also in the Finance Department. There are various other people whose names I cannot bring to memory at the moment. Back in New York City, Mr. John Logan, who is in Schedules. Mr. Thomas Kelly, Scheduling. Mr.

Wemple—Cross

James Kerley, vice president—finance. And unquestionably there were others whose names do not come to mind at the moment.

Q. What was it that you obtained in connection with your studies from people in the Finance Department of TWA?

A. Generally speaking, it was information on locations of data pertaining to financial results from operations, and also explanations of the methods in which the information was put together.

Q. Put together by the TWA staff?

A. Yes, who prepared the statements.

Q. Is this true with respect to all of the people [Tr. 4497] you named in the Finance Department? It was all for the purpose of determining where data was and getting explanations from them as to how the data was assembled?

A. I believe that is a correct answer.

Q. Did any of the people in the Finance Department or anybody else who you may not remember whom you consulted supply any of the approaches or theories which you followed in connection with the preparation of your report?

A. No, sir.

Q. That was entirely your own responsibility?

A. The approaches and theories were entirely our own.

Q. What about the people in Scheduling and Planning whom you consulted, what contribution did they make to your work?

A. There again, it was primarily for advice as to where we could find operating statistics for TWA and other airlines.

Q. That was merely a location of material?

A. Advice as to where to find the information; that's correct.

Wemple—Cross

Q. Did any of the people in Scheduling and Planning whom you mentioned or any others who you may not have [Tr. 4498] mentioned, make any contribution to the principles upon which your report was based?

A. The principles were our own development.

Q. Did you, in connection with the preparation of your report, consult with persons other than counsel and TWA personnel?

A. I presume you mean outside of our own firm?

Q. Yes, certainly.

A. I have no recollection of going outside of TWA, counsel and our own firm.

Q. As I understand it—and correct me if I am wrong, Mr. Wemple—your engagement was of the character where it was left to you to determine the techniques to be followed in preparing your reports; or were you guided as to what techniques to follow?

A. The techniques or systems we used for developing the estimates of changes in financial results that would have been the result of these additional aircraft were our development.

Q. Did you receive any directions from any of the people with respect to how you should develop your techniques?

A. A number of people expressed ideas as to how we should develop particular answers.

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[Tr. 4508] . . . Q. The decision as to the form that Exhibit 4C-1 for identification took, as I understand your testimony, was made by you?

A. Yes, sir.

Q. Is there any writing that you received from anyone outside your firm as to the form of Exhibit 4C-1 for identification?

Wemple—Cross

A. Not to my knowledge.

Q. In Exhibit 4C-1 you adopt certain various approaches with respect to each of your chapters.

Were any other approaches tested by you in connection with any one of those chapters?

A. Yes, sir.

Q. Take them chapter by chapter and tell us what other approaches were tested by you?

A. My recollection is that for Chapter II which—

Q. How about Chapter I?

A. No. Chapter II which relates to TWA having received six additional B-331 long-range intercontinental Boeing aircraft, which were delivered to Pan American; in fact, we first went through an exercise of completely rescheduling TWA's International Division operation for one of the periods in which it would have been materially [Tr. 4509] different as a result of having the additional aircraft. And we rejected that particular approach to the thing as being too complex to possibly be followed through to a reasonable conclusion.

Q. Was that decision your own—

A. Yes, sir.

Q. (continuing) —not to follow it as too complex?

A. Yes, sir.

Q. Had you submitted the results of that approach to anyone?

A. Yes, we advised Cahill, Gordon of the indicated results from that approach.

Q. When you say "Cahill, Gordon," do you mean Mr. Tenney?

A. Tenney, Ordovery, Cox.

Q. When you say "Cahill, Gordon," you are speaking primarily of Mr. Tenney, Mr. Ordovery and Mr. Cox, but Mr. Tenney being the principal one?

Wemple—Cross

A. Excuse me. Mr. Tenney was the principal. Also a Mr. Dunham, while he was a member, while he was associated with that particular firm.

Q. He is no longer associated with this firm?

A. That is correct.

Q. Do you recall when he ceased to be associated [Tr. 4510] with the firm?

A. One or two years ago.

Q. But you did present to Cahill, Gordon—

A. Yes, sir.

Q. (continuing) —the results of this other approach?

A. Yes, sir.

Q. Did you try any further approach with respect to Chapter II?

A. Not to my knowledge, no. I do not recall.

Q. Which approach did you try first?

A. The one I just described to you.

Q. The one which you rejected as too complex?

A. That's correct.

Q. After that, you tried the approach you presently have in your report?

A. That's correct.

Q. Where are the papers which deal with that approach?

A. They have been destroyed.

Q. They have been destroyed?

A. Yes, sir.

Q. How did they happen to be destroyed, Mr. Wemple?

A. The Cahill, Gordon representatives directed us [Tr. 4511] to destroy drafts which were not used in the final report and analyses which were not used in our final report.

Q. How about Chapter III? Did you try any other approach for Chapter III?

A. Chapter III relates to the earlier receipt of B-131 and B-331 aircraft. No, the analysis system used in this

Wemple—Cross

Chapter is the one we have always used for this particular study.

Q. How about Chapter IV, did you try any other approach?

A. No, sir.

Q. And Chapter V?

A. The same answer, no other approach.

Q. Did you prepare a prior report based on your other approach with respect to Chapter II?

A. I don't recall one. There was definitely not a formal, signed, submitted report.

Q. I do not mean a formal one. A draft of a report.

A. That was what my answer was. I don't recall having put together a draft on it.

Q. What did you submit to Cahill, Gordon in connection with the prior report approach?

A. I showed them our working papers.

[Tr. 4512] Q. And the results that you obtained as a result of those working papers?

A. That's correct.

Q. Do you have your working papers handy, available to you now?

A. They are not at hand. We have working papers which support these Exhibits 4B and C.

Mr. Hayes: I have a working paper here which was produced in the course of the last several months from Folder 19, check on advertising and publicity expense. I find no number on it, but I do find a date 9/16/65, with I think the initials BRC, if I can make these out accurately. Attached to it is a further sheet from the same folder of April 14, 1965. May I have these papers marked for identification?

Wemple—Cross

(Working papers, two, from Folder 19, bearing date 9/16/65, marked Defendants' Exhibit 203 for identification as of this date.)

By Mr. Hayes:

Q. Do you recognize Exhibits 203 for identification as one of the work papers that you use, Mr. Wemple?

[Tr. 4513] A. I recognize it as one of our working papers.

Q. I refer you to the long sheet, second page. There is a Footnote D, I think it is—this Xeroxing did not come out as clearly as I wish it did.

A. It sure didn't, did it?

Q. It reads, as I understand from Exhibit 2: "Schedule 3 of 3/4/65 draft of damage claim testimony."

A. Yes, sir.

Q. Can you identify the 3/5/64 draft of the damage claim testimony?

A. I don't quite know what you mean by "identify" it.

Q. Can you tell us what it was? To what is that reference?

A. It was a draft of a preliminary edition of this report.

Q. To what extent did it differ from the report now before us?

A. I have no idea.

Q. Do you have the work papers for the 3/4/65 draft?

A. Only insofar as the work papers are identical with the work papers for this particular report.

Q. Insofar as they are not identical, they, too, [Tr. 4514] have been destroyed?

A. Yes, sir.

Wemple—Cross

Q. What is the reference toward the middle of that long page, under 1961, to Tillinghast, 4/17/61?

A. I expect that's the date Mr. Tillinghast took over with TWA.

Q. I am sorry?

A. I expect it is the date at which Mr. Tillinghast became president of TWA.

Q. When were these prior work papers destroyed?

A. Over the last several months.

Q. Can you be more specific?

A. Let's see. Our report was dated May 2, 1966, and as soon as we had finished preparation of that report, we then reviewed our working papers and discarded those which were no longer pertinent to this report.

Q. That was after you had received the instructions to destroy them?

A. Yes. We had gotten the instructions before that time. I am pretty sure we didn't actively work on it until we finished the report.

Q. When did you finish this report?

A. The latter part of April.

Q. What discussion, if any, did you have with [Tr. 4515] Cahill, Gordon representatives with respect to the destruction of the work papers?

A. None. If I understand your use of the word discussion.

Q. Was there any conversation in which you engaged with the person who gave you the instruction?

A. The instructions, generally speaking, were to destroy working papers and drafts that were not used directly in this report, and other than to make sure that we understood that those referred to our various files of data analyses as well, that was about the only discussion there was on it.

Wemple—Cross

Q. What reason was given you for destroying the other work papers?

A. So that the cross-examination which would be made of me respecting this report would be limited to the material that went into this report.

Q. Was there any other reason given?

A. No.

Q. So that if the cross-examination went into prior approaches that you may have made, as you did with Chapter II, you would not have the data to answer the questions, is that right?

A. And time would not be taken to answer the questions. [Tr. 4516]

Q. Whether the time was important or not, you would not be able to answer the questions?

A. That's a natural outcome of destroying the working papers.

Q. Does the destruction of work papers accord with the practice that you ordinarily follow when you prepare reports?

A. We often follow that practice of discarding the work papers where the analysis is not used for the final answer and report.

Q. Do you destroy them before the final report is acted upon?

A. We destroy them when the final report is submitted.

Q. Immediately you destroy work papers of all other prior approaches?

A. We often destroy work papers of other prior approaches in the course of what we call filing the working papers, which is done after the final report is submitted.

Q. You never keep work papers so that whoever retained your firm would be able to be advised as to the results of other approaches you may have used?

Wemple—Cross

A. We sometimes keep work papers of all approaches [Tr. 4517] used in a study.

Q. As to this particular report, you knew that you would be a witness testifying with respect to it, did you not?

A. With respect to this report, yes, that is correct.

Q. Did it enter your mind or did counsel suggest to you that there might be inquiries as to other approaches you used?

A. Yes, sir.

Q. Did you suggest to counsel that it would be wise to have your work papers on other approaches so that you could answer counsel's questions?

A. No, I did not suggest that to counsel.

Q. You did not suggest it?

A. No.

Q. You merely wanted to cut it short, is that it, Mr. Wemple?

A. I was merely following counsel's advice.

Q. At any rate, we don't have the benefit of your prior working papers, except insofar as they contribute to the existing report.

A. They are not available.

* * * * *

[Tr. 4685] Q. It is TWA plane No. 7731.

Taking out those 28 days, that plane was out of service—24 days—pardon me—one still does not arrive at 6.6, does one?

A. That's correct.

Q. One arrives at 6.9.

A. That is correct. There are no doubt other variations that are not known to me at the moment which were used in the calculation.

Wemple—Cross

Q. Do you know how TWA reported to the CAB on its utilization of 131s during the year 1959?

A. I don't know offhand. I do know that they did report.

Q. Are you familiar with the form T3 which every airline must report?

A. Yes, sir, I know of those.

Q. Let me ask you if the way of arriving at utilization is to divide the total number of aircraft days for the year by the number of days in the year?

A. The—I guess I don't quite understand your question. Is the way who would arrive at aircraft utilization? And I am not sure about the use of your term "utilization." Please expand on the question.

.

[Tr. 4765] . . . Q. What are the other advantages that the fan jets have?

A. The fan jet has a larger takeoff power so that it can get off the runway in a shorter distance. It is reported to be quieter in the vicinity of airports, and under certain circumstances has a higher cruising speed.

Q. That is after it gets on its cruising speed?

A. That's right.

Q. On page 3 of your report you state that Cahill Gordon gave you some additional assumptions with respect to additional jet aircraft, and then you have a table. Are both the upper and part of that table assumptions given you by Cahill Gordon?

A. The upper part of the table is the Cahill Gordon assumptions that were given to us as set forth in II, III, V and V on page 1.

Q. What about the lower part of the table?

A. That is a listing of the aircraft fleets that would be changed in this reconstructed operation.

Wemple—Cross

Q. Is there implicit in this table on page 3 that even with a 63 plane fleet TWA would still have leased four 720-Bs and purchased eighteen 131-Bs.

[Tr. 4766] A. That is my opinion.

Q. I asked you if there was an implicit assumption that either there is or there isn't.

A. It is my opinion. I made that assumption.

Q. You never stated that in your report, did you?

A. I list them there as things which are unchanged. I list elsewhere the things which are given to us by Cahill Gordon.

Q. This is all one table, Mr. Wemple. At least it looks like it to me as you presented it. And the whole table, as introduced by you, gave us assumptions.

A. I call your attention to the Footnote A on the upper half of the table—

Q. That is right.

A. —given to us by Cahill Gordon. The other one has a completely different subheading "unchanged numbers and dates."

Q. So that you assumed that even with the 63 plane and even if it had been received by the dates that you were given to assume receipt, TWA would nonetheless have ordered four 720Bs and eighteen 131Bs?

A. Yes, sir.

Q. On what did you base that assumption?

[Tr. 4767] A. The B-131B aircraft fleet was ordered by TWA the last part of 1961—it may have been ordered before then. But at any rate they came in March 1962, and were used in conjunction with fifteen 131 aircraft, and the following year fifteen 331 aircraft—let me get my numbers right. Excuse me. And the following year twelve 331 aircraft and five 331-B aircraft. So that the latter part of 1963, TWA was operating essentially the 63 plane fleet plus these eighteen B-131B aircraft. The B-720Bs were leased

Wemple—Cross

in July 1961—started July 1961 and were returned in the fall of 1962, roughly coincident with TWA's receipt of the entire B-131B fleet. So, in other words, when TWA got its B-131B fleet, it released the 720-B four aircraft.

Q. You say here that they were returned in September of 1962?

A. No. Which were?

Q. In the table on page 3.

A. The table on page 3 simply says they were returned in—

Q. September 1961.

[Tr. 4768] A. No, that is the date they were received.

Q. I am sorry. Wait a second.

A. And the return date is illustrated on Exhibit B.

Q. I'm sorry. My mistake. They were actually returned partly in September and partly in October of 1962, were they not?

A. That is correct.

Q. When TWA ordered the 131-Bs, it had, in fact, only a 47 plane fleet, did it not?

A. And it had on order to my knowledge the additional 331-B—sorry—and it also ordered the B-331B aircraft, five of them. And before the end of 1963, it obtained six more Convair 880 aircraft.

Q. I am speaking of 1961, Mr. Wemple. Did TWA place an order with Boeing in the first half of 1961?

A. I don't know.

Q. You do not know?

A. No, sir. I do not have information available on when those orders were placed.

Q. Were you a consultant to TWA at that time?

A. I was engaged by TWA in the fall of 1961 as I remember it to do a study of their forecast. I think it was August, but I'm not really sure of that date.

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Wemple—Cross

[Tr. 4841] • • •

The Special Master: I will hear Mr. Tenney.

Mr. Tenney: First, Mr. Brownell, I was not able to follow Mr. Hayes' numbers. I cannot address myself to them. I would have to analyze the numbers that he used in order to understand the comparisons that he is making. I don't think that that is particularly significant here. I think what is significant is the use which Mr. Hayes apparently proposes to make here of these, as to which I have read very carefully his comments on Tuesday, and I don't find anything that changes that in what he has just said although I may have possibly misunderstood him. I have three points I would like to make on the line of inquiry that Mr. Hayes now intends to pursue, as I understand it. First, it seems to me quite clear that on Mr. Hayes' own showing on Tuesday that whatever these documents prove or do not prove they are not appropriate subject matter for cross examination of this witness on his direct examination, because they are outside the scope of his direct testimony. [Tr. 4842] In answer to Mr. Hayes' questions on Tuesday, Mr. Wemple expressly said that the possibility of TWA acquiring various different kinds of aircraft did not enter into the calculations of his reports. The report itself, TWA Exhibit 4C, all four volumes of it, in spite of Mr. Hayes' attempt for the last two days to make it appear that he cannot understand it, is quite clear, and Mr. Wemple has himself described it quite precisely as an analysis of whether or not TWA would have made a greater operating profit if it had had certain specific additional jet aircraft at certain specific times, and his

Wemple—Cross

analysis results in a very clear demonstration that it would have made a greater operating profit and a calculation of how much. It does not address itself, nor has Mr. Wemple expressed any opinion on whether TWA would have been better advised to get still different jet aircraft from any particular source.

• • • • •

[Tr. 4854] A. And at that time several of the other people I mentioned, including Mr. Smock, worked for Mr. Rummel.

Q. How about him personally, did he participate in the preparation of it, so far as you know?

A. I have no direct knowledge of that. It was done by his people, to my knowledge.

Q. And Mr. Rourke?

A. I have no specific recollection of being involved at that time with Mr. Rourke in this connection.

Q. Were there any other persons connected with the preparation of Defendants' Exhibit 213, other than you and your associates and TWA personnel?

A. I have no first-hand knowledge on that subject.

Q. You mentioned in your letter, Defendants' Exhibit 214—before I come to that, I have a question begotten by something Mr. Tenney said. Do I understand that Exhibit 213, as handed to you, does not accord with your recollection as to the exhibits as to which you wrote Defendants' Exhibit 214?

A. As I looked through this Exhibit 213 briefly during the lunch break, there were tables in here which did not look familiar to me. There were others that did [Tr. 4855] look familiar. And not anticipating that this study was going to be subject for cross-examination, I have not recently thoroughly reviewed our working papers or this

Wemple—Cross

particular 1962 study. I remember seeing some papers in our files that looked like some of these exhibits having to do with revenue expenses. I do not—I have not seen some of the other things in recent years.

Q. Would it be a great burden—do you have a copy of what Defendants' Exhibit 213 purports to be in your office?

A. Not to my knowledge.

Q. You do not?

A. No. As an individual package like that? We may have. I have no recollection of it. I have not seen one recently.

Q. The reason I ask is that if there is anything in Defendants' Exhibit 213 which should not be there, I would like to know.

A. I would be pleased to look through our papers and identify all parts of 213 that we do have in our office.

Q. Fine.

Mr. Tenney: May I suggest on that that [Tr. 4856] it is not really a question as to whether there is something in this document that should not be there? I don't think that we have any question but that this document, 213, is what it purports to be. It is a document that contains financial forecasts for the period 1962 to 1965, labeled Plans 1, 2 and 3. It was apparently prepared by TWA personnel and inside it on its various pages it says various things, and as far as I know, they are authentic. The problem is that you cannot assume that particular pages of this document are pages that Mr. Wemple is familiar with or that he had any knowledge of in connection with his letter. I think you will simply have to raise

Wemple—Cross

whatever particular points in it you wish to ask him about and find out.

Mr. Hayes: If we get to any such page, Mr. Wemple can always so state.

Mr. Tenney: Yes.

• • • • •

[Tr. 4862] • • • Q. The question was what your recollection was as to why Defendants' Exhibit 214 was confined to a review of Plan 3.

A. It is my recollection that at the time we completed our work on this review, that Plan 3 had been selected or adopted as the plan that TWA was most likely to follow.

Q. What information did you get in that regard, Mr. Wemple, and from whom?

A. I do not remember specifically. My guess is that the instruction probably came from Mr. Leslie or Mr. Rummel.

Q. Were you advised as to who participated in the decision to follow Plan 3?

A. No, sir.

Q. You have no information at all as to that?

A. None whatsoever.

[Tr. 4863] Q. If you will, look, please, at Defendants' Exhibit 213 and turn to page III-1. It is a single sheet and it is headed "Equipment Program."

A. Yes.

Q. You have it before you, Mr. Wemple?

A. I do.

Q. That page sets forth the equipment program assumed for Plan 3.

So far as acquisition of any new equipment is concerned, it is concerned solely with fan jets, is it not?

A. That's all that are listed, yes, sir.

Wemple—Cross

Q. I will make a statement and you can correct me if I am wrong. I have found that in none of the equipment programs, and those for Plans 1 and 2 appear respectively at pages I-1 and II-2 call for any acquisition of 880s or for any acquisition of non-fan jet equipment.

A. Do you wish me to look at those pages and—

Q. Is that your recollection or do you want to check?

A. I have no recollection one way or the other on that.

Q. Do you want to check?

[Tr. 4864] A. What are the pages again?

Q. I-1 and II-2.

Mr. Tenney: Off the record.

The Special Master: Off the record.

(Discussion off the record.)

The Witness: As to the Caravelle equipment program, Sheet II-1, I have no knowledge or information as to whether those were fan jet engines or not. And on Sheet I-1, only fan jet aircraft are listed. And on Sheet III-1, only fan jet aircraft are listed.

[Tr. 4865] Q. Was your letter, Defendants' Exhibit 214 in any way an indication of an opinion by you, Mr. Wemple, that Plan 3 was the best of the plans?

A. I do not read anything in there that would indicate that.

Q. Was it or was it not?

A. It was not intended to be.

Q. Did you at the time in the latter part of 1963 know about the acquisition of six 880s by TWA?

A. At what time?

Q. At about the time they were acquired in the latter part of 1963.

A. At that time, we were working for Cahill Gordon. My guess is that I either read about it in the newspapers

Wemple—Cross

or heard about it. I have no specific knowledge of any particular instance of learning about the acquisition of the 880s in the latter part of 1963.

Q. You had no discussions with TWA personnel concerning it?

A. No, not to my recollection.

Q. I don't think I asked you this this morning.

Mr. Hayes: Do you have Mr. Rummel's Exhibit 2 before you?

Q. I meant to ask you but I cannot remember having [Tr. 4866] asked you. Will you turn to Annex D of Defendants' Exhibit 2 for identification? In the course of the preparation of your report here—

A. Excuse me. Which report?

Q. I mean Defendants' Exhibit TWA 4C—

A. B and E.

Q. —Volumes I and IV, I think.

A. Yes, sir.

Q. —did you have delivered to you at any time Annex D of TWA Exhibit 2?

A. I don't believe so.

Q. Was the text of Mr. Rummel's prepared testimony which is the exhibit itself delivered to you at any time?

A. No, sir.

Q. So you never read it?

A. That is correct.

Q. Have you read Mr. Rummel's testimony in this case?

A. No, sir.

Q. Or had any report given to you as to the substance of it?

A. Yes, I have heard from time to time of things that it covered.

[Tr. 4867] Q. Things relating to your report here?

Wemple—Cross

A. The development of the early delivery dates for certain of the aircraft I understood was developed in Mr. Rummel's testimony.

Q. Have you been told the substance of his oral testimony in that connection?

A. No, sir.

Q. You were not?

A. No, sir.

Q. All you were told is that he covered the subject in his cross-examination?

A. That is correct.

Q. Is that the substance of it?

A. Yes.

Q. Did you at any time prior to taking the stand here have brought to your attention the prepared statement of Mr. Connelly in this proceeding?

A. Yes.

Q. Did you see that?

A. I believe I have read it.

Mr. Hayes: That is TWA Exhibit 3, isn't it?

Mr. Ordovery: Yes.

The Witness: Excuse me. My recollection is that I have read a state- [Tr. 4868] ment by Mr. Connelly. Whether that is specifically TWA Exhibit 3, I do not know.

Mr. Hayes: No, I understand you do not know that.

Q. When was that that you read it, Mr. Wemple?

A. Would it have been a year, a year and a half ago?

Q. I don't know.

A. I don't remember any closer than that.

Q. Substantially before it was submitted in this action?

Wemple—Cross

A. Prior to May 2, 1966. How much before, I have no recollection.

Q. Did you use any portion of Mr. Connelly's statement in connection with the preparation of your report in this proceeding?

A. My vague recollection is that Mr. Connelly's statement had some what we call revised delivery dates which were used by us at that time and may be the same as we now have in our report.

Q. They are the same as appeared I can tell you—

A. Thank you.

Q. —in Mr. Rummel's prepared statement.

A. All right.

[Tr. 4869] Q. And they also conform with delivery dates which appear in your report?

A. Then those are the ones.

Q. Have you reviewed Mr. Connelly's testimony in this proceeding?

A. No, sir.

Q. Have you received—

A. Unless it was the same as the statement I read earlier. I guess it was not.

Q. I am speaking of his oral testimony.

A. No, sir.

Q. Have you had any report given to you as to the substance of Mr. Connelly's testimony on cross-examination or direct examination in this proceeding?

A. As I recall, it was my understanding that he discussed the subject of earlier delivery of various Boeing aircraft to TWA. I have no other information than that.

Q. That is the sum total of the information given you?

A. Yes, sir.

Wemple—Cross

Q. You testified that you had seen the report of the Speas Associates.

A. Yes, sir.

[Tr. 4870] Q. Did you read the testimony of Mr. Speas in this proceeding?

A. No, sir.

Q. Any report as to the testimony of Mr. Speas in this proceeding?

A. No, sir.

Q. Did you read the report that was put in in this proceeding through the witness Mr. Morehouse?

A. I have read parts of that report. It is a very large report.

Q. Are you familiar with the scope of it?

A. Yes, sir.

Q. Have you read enough of it to feel familiar with it?

A. I am very modestly familiar with it, not thoroughly.

Q. Did you read any of the cross-examination or redirect examination of Mr. Morehouse in this proceeding?

A. I saw a—I think it was about one paragraph of Mr. Morehouse's statement respecting cross-examination, in the course of the cross-examination.

Q. Do you recall what subject was being discussed at that point?

A. It was the general advantage or disadvantage of [Tr. 4871] owning or leasing aircraft.

Q. You are familiar with the testimony he gave in that regard?

A. I remember his conclusion.

Q. Do you recall what it was?

A. That he was in favor of an airline owning aircraft.

Q. Is there anything else in his cross-examination that was called to your attention?

Wemple—Cross

A. No, sir.

Q. Have you received any other report of the content of the cross-examination or redirect examination of Mr. Morehouse in this proceeding?

A. It has been—it is my understanding that his cross-examination covered the general scope set forth in his written report. I know no details, nothing specific.

Q. You were advised orally generally of the scope of the cross-examination, is that correct?

A. As being approximately that set forth in his report.

Q. Have you received copies of the Price Waterhouse reports, Exhibit 7 with various subdivisions?

A. I have copies of the Price Waterhouse report. I don't know them as Exhibit 7. I presume they are.

[Tr. 4872] Q. We will take that for granted.

A. My copy is not marked.

Q. Assume it is Exhibit 7.

A. Yes, sir.

Q. You have copies?

A. Yes, sir.

Q. Have you read those copies?

A. I have been over those copies. I have not read them in great detail.

Q. You are familiar with the manner in which they were prepared?

A. I am.

Q. You did mention that you had some early delivery days or you recall some early delivery dates attached to Mr. Connelly's prepared statement.

Did you make any attempt whatever to verify in any way these earlier delivery dates set forth in that statement?

A. No, sir.

Wemple—Cross

Q. Have you any knowledge as to negotiations between Boeing in 1955 with either Pan American or American looking forward to the purchase by those airlines of jet aircraft?

A. I vaguely remember reading in the public press [Tr. 4873] about various airlines talking with Boeing about obtaining passenger carrying jet aircraft.

Q. In connection with the preparation of your present report, have you had any information given concerning such contract negotiations?

A. You say such contract negotiations between Boeing on the one hand and either American or Pan American on the other? I have been given general statements which included statements to the effect that Boeing and—was negotiating with Pan American and American Airlines—excuse me. Let me correct that statement. I have been told that Boeing was talking with Pan American and American Airlines in 1955 about those airlines purchasing Boeing jet aircraft.

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[Tr. 4898] * * * Q. Is it your testimony that the planes that you set forth on page 30, for example, as having had plane miles reduced are the same planes that are shown in Annex F to Mr. Rummel's statement as having been retired?

A. That was and is not my testimony.

My testimony is that TWA had capability of operating the remaining amount of piston plane miles that would have been required by this plan of operation with the reduced fleets after this earlier retirement.

Q. You do not say that any place in your report, do you, what you just said to me?

A. Our report is premised on that calculation. Our report does not deal specifically with the earlier retirement of the piston aircraft.

Wemple—Cross

Q. But you nowhere in your report set forth what you stated a moment ago that it was based on the conclusion or assumption, I have forgotten your language that TWA would have had sufficient pistons available to operate the necessary piston plane miles?

A. This was not the subject of our assignment. We made the back-check as a proposition of being careful and it came out with a satisfactory answer.

[Tr. 4899] Q. Do you have any work papers on that?

A. I don't know.

Q. Because there is nothing in the report on the subject, they too have been destroyed.

A. I don't know whether we have work papers on that particular item.

Q. Will you check and see if you have work papers on that subject?

A. Yes, sir.

Mr. Hayes: Off the record.

(Discussion off the record.)

Mr. Hayes: May we recess for five minutes?

The Special Master: Yes.

(Short recess taken.)

[Tr. 4900] The Special Master: Proceed.

The Witness: May I please correct an impression which I left indavertently. Efficient counsel has given me copies of all of the TWA exhibits. Therein is a copy of Mr. Rummel's testimony. I have not read it. We do have it. I have not read it.

By Mr. Hayes:

Q. Do you know whether they were read by anyone working on the report under your supervision?

Wemple—Cross

A. No, sir, they came after the—our report was finished.

Q. My questions were directed to the preparation of the report.

A. No, sir.

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[Tr. 4925] . . . Q. Did you make any study to determine to what extent the 131Bs were either used on segments on which the Convairs might have been used or displaced planes on other segments which displaced planes were, in turn, used on segments? I will break that up. I will start with the first. It is too long a question. Did you make any study to determine the extent of it all to which the 131Bs were used on planes on which TWA could have used the 880?

The Special Master: On routes.

A. Shown on the table at the top of page 69, in October, 1963, TWA was operating 26 Convair 880 jet aircraft between 36 pairs of cities. And those 36 pairs of cities also received service as shown on the top of page 69 from a certain number of B131B flights and flights with B131s and flights with the B331s. And you can see a change in pattern, September 1960, through October—sorry—December 1960 through October 1963, in service to those 36 pairs of cities with various types of jet aircraft.

Q. Is there any similar tabulation in your report or in your work papers showing the data which appears in [Tr. 4926] the table on the top of page 69 on a month-to-month basis?

A. No, sir.

Q. Did you make such a study?

Wemple—Cross

A. We may have made a study on three-month intervals. I am relatively sure we did not make it on monthly intervals. And I am doubtful that we still have it.

Q. It didn't enter into your report so it was destroyed?

A. We show here the part that we did keep—that we did use. The other parts that we did not use were destroyed.

Q. Let me ask you a general question. Laying aside the 63-plane fleet with which your report deals, did you make any study as to the extent to which TWA with other aircraft which it acquired during the period was able to and did service cities that might have been serviced with 880 aircraft?

Mr. Tenney: May I ask if that is limited to other than what Mr. Wemple has already said or could it be so limited?

Mr. Hayes: I never asked him this question. I started to ask the second part of a long question and then I split it up and I confined it first to 131Bs and now I am asking him this question [Tr. 4927] generally.

Mr. Tenney: Would you read the question back to me? It seems to me he has said a good deal already and I would like to hear it again.

The Special Master: Read it back.

(The question was read.)

Mr. Tenney: I thought he had already covered it, but if he hasn't, go ahead.

A. I have to qualify my answer because, of course, our report deals only with the 63-plane earlier and et cetera that is set up for our premises. However, if I understand your question correctly, our report does show TWA

Wemple—Cross

history on page 60 and on page 69 and page 59. And there are pairs of cities which were served by TWA with CV 880 aircraft and that were served by TWA with different types of jet aircraft as well prior to the times the full fleet of 26 CV 880s became available. If I may be specific, to answer what I understand your question to be, among these—shown on page 69, among these 36 pairs of cities that received service in October 1963 with 26 CV 880 aircraft, amounting to 44,000 daily westbound plane miles, those same pairs of cities received service in March 1962 with 4900 westbound [Tr. 4928] plane miles of B331 aircraft. When the additional CV 880 became available in October, the B331 plane miles scheduled for those pairs of cities was reduced from the 4900 to the 1100. If I understand your question, that is a pertinent answer.

Q. It is not a pertinent answer to the question I thought I was asking you. Let me try it this way: Did you make any studies of any of these pairs of cities as to whether with the aircraft that was assigned to them the pairs of cities were adequately serviced at any of the periods where you have tables?

A. We did not make a study as to whether the service to a pair of cities was adequate or otherwise.

Q. You are giving us an opinion here as to supposed damages without determining first whether or not the service in fact was adequate.

A. My report deals with whether TWA would have made more operating profit from the operation of these aircraft.

Q. If you indulge the assumption, if you will, with me, Mr. Wemple, that the service to the cities was adequate, at any one of these times, at the time of any one of these [Tr. 4929] tables, are you saying that because arithmetic does it they would have made more money with more planes?

Wemple—Cross

A. I make no representation or statement as to whether or not the service to those cities was adequate. I cannot indulge that assumption. I have no basis for doing it.

Q. I asked you to. You indulge all sorts of assumptions for plaintiff. I ask you to do one now for defendants.

Mr. Tenney: Will you say what you mean by adequate, Mr. Hayes.

Mr. Hayes: I mean what you meant in the complaint. That's exactly what I mean.

Mr. Tenney: I don't think that is a proper question.

Mr. Hayes: You used the phrase that they had an inadequate number of airplanes. So I will use exactly the same or the opposite of it that they had an adequate number of airplanes.

Mr. Tenney: I think in order to get an answer from this witness, you should and will have to state what you mean by adequate.

Mr. Hayes: I mean whatever you mean. You can define the term, if you want.

[Tr. 4930] Mr. Tenney: It is your question, Mr. Hayes.

Mr. Hayes: It is your term and I am adopting it.

A. From the point of view of maximum profit, TWA could achieve more profit by having the additional aircraft for the revised service to these pairs of cities which they had increase when they got the additional CV 880 aircraft. From that point of view, I believe it is perfectly correct to include that this report is based on inadequate service to these pairs of cities.

Wemple—Cross

Q. Did you make any study of the pairs of cities to arrive at the conclusion that the service was adequate or inadequate?

A. From the point of view of operating profit to TWA, yes.

Q. No. Did you examine the service actually rendered, the number of passengers carried, the amount of competition that was met? That is the kind of study I mean, Mr. Wemple. Did you make any such study?

A. That study was not within the scope of our engagement.

Q. You merely were given an arithmetical task and you performed it; is that it?

A. TWA's record clearly demonstrates that they [Tr. 4931] successfully increased the service to those pairs of cities during this period of time when they were receiving the CV 880 aircraft, and would have made much more operating profit if they had been able to increase the service with this superior aircraft earlier.

Q. It would have—

A. I did review the service in certain instances by other airlines.

Q. Do you have any of your working papers on that?

A. I have none. No, that was a generalized review.

Q. It didn't get into your report, so they are destroyed?

A. It was not involved directly in the calculation.

Q. They are destroyed?

A. That is correct.

Q. We don't have the benefit of them?

A. They are set forth as public information in all airlines schedules.

Q. To what extent did you study on a segment-by-segment basis, either domestic or international the number of

Wemple—Cross

passengers carried between pairs of cities and the services offered by competing airlines between those pairs of cities as well as TWA?

[Tr. 4932] A. At one of the earlier stages in, as I remember, Chapter IV, I did study such data. It did not give a basis for calculation of revised results. It was discarded.

Q. And destroyed?

A. And destroyed.

* * * * *

[Tr. 4937] * * * *Examination (cont'd) by Mr. Hayes:*

Q. Have you any matters on which you desire to report this morning, Mr. Wemple?

A. Yes. You requested letters between TWA and ourselves in connection with the scope of our engagement in the fall of 1961, and I have found those letters. They are being duplicated at the moment. They will be brought in shortly.

Q. We can look at them later.

A. Secondly, you requested me to review my working papers for an analysis I did at one time respecting the adequacy of TWA's piston aircraft fleet after the earlier retirement as stated by Rummel and Speas had been accomplished to perform the piston aircraft operations that TWA would have been obliged to perform in accordance [Tr. 4938] with our damage calculation. I do not have any of those papers. I discarded them once I had made the determination as being of no particular consequence.

Q. When you say you discarded them, you mean they, too, have been destroyed?

A. They are destroyed. I can't find them. I presume they are destroyed.

Wemple—Cross

Q. Is that your full report this morning?

A. That is my full report.

Q. With respect to the 720Bs which TWA leased beginning in July, four of them, and they had all of them by September or October of 1961, did you make any determination as to the length of the segments serviced by those planes?

A. I remember tabulating the flights on which those planes were operated, the pairs of cities served and the length of service—length of segment.

Q. Did you determine what the average length flown per departure was for the 720Bs?

A. I have no recollection whether I did or did not.

Q. Do you have any information which would enable us to determine that?

A. The employees' timetables for that period set [Tr. 4939] forth in complete detail the operation of the 720B. It could be calculated from that information.

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[Tr. 4942] The Special Master: It is put out by the company, isn't it?

The Witness: That is correct.

The Special Master: Where is the number of miles? Does that appear on here?

The Witness: No. Number of miles comes from other tabulations put out by various agencies.

The Special Master: Off the record.

(Discussion off the record.)

By Mr. Hayes:

Q. Is the information as to schedules contained in the employees' timetables as of any particular date the same

Wemple—Cross

as the information as to schedules that would be contained in timetables sent to the public?

A. So far as I know, yes.

Q. Are you acquainted with the Schedule T4 to the Form 41 reports?

A. I do not recognize that number, as you describe it.

Q. You do not, therefore, know what is contained in Schedule T4?

A. I do not.

Q. Is there any question in your mind, Mr. Wemple, as to the accuracy of the Form 41s and the schedules there-
[Tr. 4943] to that were submitted by TWA to the CAB?

A. I am sure they are prepared with every effort expended to have them accurate.

Q. The Form 41s are sworn to by an officer of the company, are they not?

A. So far as I know.

Q. I want to rephrase a question I put before. Mr. Wier reminded me that I misstated it. I take it the answer to the question is going to be you do not know. That is, as to whether if one uses the Schedule T3s and the Schedule T4s to CAB Form 41, one can calculate the average number of miles per departure of each type of aircraft for any particular period.

A. I do not know.

Q. You mentioned the Boston-Los Angeles flight of the 720B, which I believe you said was the only transcontinental flight that you recalled.

A. That is correct.

Q. Did another plane replace the 720B on that flight when the 720B lease ended?

A. I do not know.

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Wemple—Cross

【Tr. 4948】 Q. What is inadequate about making a comparison on a miles-flown-per-departure basis?

A. I believe the theoretical problems are obvious that there are so many different pairs of cities that TWA flies between that it is conceivable that TWA could use the 880 aircraft on a certain number of—correction—that CV—correction—that TWA could use the 720B aircraft between certain pairs of cities and by coincidence it could have the same average miles per departure that the CV-880 does record.

Q. Let me try it this way: Were you familiar with TWA's plans as to where they intended to use the 880s?

A. I have read TWA's plans that were set up, I believe, in their documents "Jet Plans and Premises," as to where they planned to assign the CV-880 aircraft prior to their receipt of those aircraft.

Q. Did you follow through as to where they actually scheduled the 880s when they received them?

A. I also am familiar with where they actually used the 880s when they received them.

Q. Did they, to begin with, plan to use the 880s on transcontinental hops?

A. I do not recall any such plan.

Q. Do you know the—

【Tr. 4949】 The Special Master: Did you say "transcontinental" or "transatlantic"?

Mr. Hayes: Transcontinental.

The Witness: Excuse me. May I ask for interpretation? You mean nonstop transcontinental?

Mr. Hayes: Yes, nonstop. I am speaking of flights flown per departure. All my questions are directed with that in mind.

Wemple—Cross

By Mr. Hayes:

Q. What was the longest hop on which they planned to use the 880s?

A. I do not remember.

Q. Do you know what the average length of hop per departure was on which they planned to use the 880s?

A. I do not remember.

Q. Did you make any study of that?

A. I reviewed briefly TWA's plans for use of the CV-880 aircraft that were in the records in the period prior to when they actually did receive the aircraft, which would have been the early part of 1960, the latter part of 1959.

Q. When you say you reviewed briefly, would you tell us what you did?

A. I read pages taken from TWA's "Jet Plans and [Tr. 4950] Premises," which showed pairs of cities which they intended to serve with the CV-880 aircraft.

Q. To what extent, if at all, did you use the material you found in "Jet Plans and Premises" in the preparation of your report in this proceeding?

A. I have no recollection of having made any consequential use of that information.

Q. Did you anywhere in your report or in preparation, the work you performed in preparing it, make a comparison between where TWA planned to use the 880s and on what segments, and what, if any, planes they actually used to service those segments?

A. I noted that TWA's full use of CV-880 aircraft was different in a number of respects from the plans set forth in the earlier "Jet Plans and Premises" documents.

Q. When you say you noted that, what do you mean by those words?

Wemple—Cross

A. This was my conclusion from looking at sets of papers which showed both sets of information.

Q. Did you make any tabulation?

A. No, sir.

Q. You just glanced at it?

A. I reviewed it.

Q. And came to a conclusion?

[Tr. 4951] A. And came to a conclusion.

Q. And your conclusion is not recorded anywhere on paper?

A. That is correct.

Q. Does your conclusion enter into your report?

A. The report is, of course, based on TWA using the CV-880 aircraft in precisely the manner in which they did use them.

Q. But did you make a comparison by pairs of cities, for example, between what TWA planned to do and what it actually did?

A. This was the information that I looked at that I have just referred to.

Q. And did not use?

A. And used it to come to a conclusion that they were different and our damage estimates calculation is based on what TWA actually did do.

Q. When you say came to the conclusion that they were different, do you mean that the 880s were scheduled in a different fashion, in fact, than the "Jet Plans and Premises" had called for?

A. There were differences between those two sets of operating plans, one fact and one anticipated.

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[Tr. 4974] Q. I notice in 1960 per Exhibit B you show that during the so-called peak period TWA scheduled from

Wemple—Cross

7.5 to 8.1 planes in its international service, all 331s. Did you make any study of the frequencies on which those planes were used and of the destinations they covered?

A. Yes.

Q. Where do I find that study in your report?

A. It is not set forth in our report. The information is of course in the employees' time tables.

Q. Did you tabulate the information? Is there any sheet to which it has been reduced?

A. There is no sheet of tabulation in the report.

Q. What do you mean then when you said you made a study? Do you mean you looked at the employees' time table?

A. And as I recall I made tabulations.

Q. You did make tabulations?

A. As I recall, yes.

Q. Where do I find the tabulations?

A. Those are not in existence.

Q. They too have been destroyed?

A. They have been destroyed as being of no particular consequence. I beg your pardon? Let me withdraw that answer and let me report back to you. I have a glimmer of having seen that in our working papers recently, and I would like to just have the opportunity to check.

Q. All right, will you do so?

A. Yes. Did you have in mind a particular year?

Q. I am talking about 1960. I am going to ask exactly the same questions for 1961, 1962 and 1963.

A. I will look up the answer to all three of them.

Q. What I have in mind is a tabulation showing what frequencies these planes were flown on, with what destinations. I am speaking of transatlantic flights now.

Wemple—Cross

A. Yes, I understand your question.

Q. Did you make any study of what flights were being offered on the same segments that TWA flew during the peak seasons of each of these years by TWA's competitors on those segments?

A. I reviewed such information.

Q. What does that mean, Mr. Wemple?

A. I made sample tabulations throughout that period of flight-transatlantic flights to various cities [Tr. 4976] operated by TWA's competitors.

Q. Where is that tabulation?

A. So far as I know, that tabulation has not been saved, because I did not think it was of material or consequence.

Q. So you destroyed that?

A. It is destroyed.

Q. Did any part of that enter into your report?

A. Our calculation is not on that basis.

Q. To what point did you carry that study of what TWA's competitors were offering?

A. I believe I have already answered that question. Perhaps he could read back my answer to your previous question.

The Special Master: Was the general tenor of your answer that you made tabulation, that means numerical tabulation?

The Witness: Yes, sir.

Q. Did it show the number of frequencies each competitor flew?

A. It showed the number of flights per week to various cities offered by TWA's competitors.

Q. Did it cover all of the transatlantic points to which TWA flew?

Wemple—Cross

[Tr. 4977] A. I remember it covered the principal ones.

Q. Will you define those?

A. London, Paris, Rome, Frankfurt.

Q. Did it cover Lisbon or Madrid?

A. It did not cover Madrid, and I am hazy as to whether my analysis of competitors covered Lisbon to the same degree as I did the other cities.

Q. Did it show the number of aircraft each competitor was operating?

A. No, sir, it showed flights per week.

Q. Just flights per week?

A. Yes.

Q. Was that true of each of the years 1960, 1961, 1962 and 1963?

A. I did for a number of years. I do not recall whether I did it for all of them.

Q. At any rate we don't have that data with which to compare your Exhibit B?

A. That is correct. The data are available in public documents.

Q. Thank you. What was the source you used to accumulate that data or what were the sources?

A. Old airline guides.

[Tr. 4978] Q. You did not consider the information you obtained from that study to be of any relevance with respect to your Exhibit C?

A. Exhibit C is a calculation—excuse me—correction—Exhibit C is a tabulation of the results of our calculation showing average number of additional—of jet aircraft that TWA would have had with the additional and earlier deliveries that are our premises. I do not see how there is any relationship between the service by competitors to par-

Wemple—Cross

ticular European cities and this tabulation which is simply results of a calculation.

Q. Are you saying by that that as long as TWA continued to add planes it will continue to add revenue at a profit regardless of what competitors do?

A. I don't believe I have said that anywhere in this report.

Q. Is that one of the bases necessary to your report?

A. No, sir, it is not.

Q. All you do here is add planes and calculate additional revenues and deduct calculated additional expenses, do you not?

A. I think it is very appropriate to refer to the [Tr. 4979] charts on pages 22 and 24, with particular reference to the chart on page 24 which shows tremendously good correlation historically between the percentage of seats TWA offered in transatlantic service and the percentage of passengers which it achieved in transatlantic service. And that demonstrated correlation over the years 1958 through 1963 is a principal basis for our calculation of the additional revenues that TWA would have obtained.

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[Tr. 4987] . . . Q. Did you make any similar study of other airlines operating transatlantically to determine whether their percentage of passengers followed closely their percentage of seats?

A. I remember doing a calculation respecting Pan American. I doubt that I did any others.

Q. Where is that study?

A. That has been discarded.

Wemple—Cross

Q. Destroyed, you mean?

A. Yes.

The Special Master: Do you recall what it showed?

The Witness: Not as good correlation as TWA has achieved, but the more general pattern, as I remember it.

[Tr. 4988] The Special Master: That is for the same year?

The Witness: I don't remember whether I did it exactly the same years. It was within the same period.

Q. In Exhibit C, Sheets 4 and 5 of your report, Mr. Wemple, during the peak season, June through September in 1960, you have a range of 11.6 to 12.4 331s assigned to international service; in 1961 you have a range of 12.3 to 12.5 assigned to international service with, incidentally, 12.8 in October; in 1961 you have a range of—

A. Excuse me. I believe you are reading 1962 now.

Q. 1962, yes. In 1962, you have a range of from 16.2 to 16.7 assigned to international service, and in 1963 you drop to a range of from 15.5 to 15.9 in international service.

Did you make any study of any kind as to the routes to which those planes would be assigned?

A. I think I answered a similar question earlier in this proceeding to the effect that our original approach to the premise of six additional B331 aircraft was based on—correction—was actually an effort to reschedule TWA's International Division and to set forth pairs [Tr. 4989] of cities and frequencies.

I believe I also testified that we discarded that approach because it was too complicated and in my judgment not

Wemple—Cross

nearly as good an analysis as the one we have set forth here.

Q. I remember that testimony.

What was complicated about it, such a study, Mr. Wemple?

A. The development of a schedule pattern for an airline is a tremendously complicated assignment because so many different things must be taken into account, such as when you want your departures, when you want the arrivals, crew changes, crew transfers, maintenance of aircraft, utilizing small periods of time for short flights and many other factors.

Q. You would also have to take into consideration what competitors were offering, would you not?

A. Yes, sir.

Q. Did you go that far in your study which you destroyed?

A. We had available to us at that time the schedules of the competitors.

Q. I have already asked you this question with respect to 720Bs and the 880s.

[Tr. 4990] Did you with respect to the 131s make any calculation as to the average number of miles flown per departure for any of the years covered by your study?

A. I do not recall having made any calculation of that figure.

Q. Did you make any such study with respect to the 131Bs?

A. I do not recall having made it.

Q. Do I understand—I think my understanding is accurate—just check me, Mr. Wemple—that aside from whatever may have appeared in the transatlantic study which

Wemple—Cross

you destroyed, you did not make a study as to where TWA in 1961 would have operated 11 jets transatlantically as against the 7.3 it did in fact operate?

A. We considered that problem and came to the conclusion that the operation by TWA when it did receive the jet aircraft which were actually received at later dates shows that TWA had schedules that could have been used at these earlier dates to utilize these additional aircraft.

Q. Where are the data for that study?

A. The data—the basic data for this study are in the employees' timetables.

Q. Where in the employees' timetables would I find where TWA intended to use additional jets?

[Tr. 4991] A. That was not my statement, sir. It was where they actually did use jets.

Q. I know. The question had to do with the additional jets.

A. I'm sorry.

Q. And that's what your answer had to do with?

A. I did not understand the intended aspect of it.

Mr. Tenney: It was not stated.

Mr. Hayes: I beg your pardon. It was very explicitly stated.

The Special Master: State it now the way you would like to have it answered.

Q. Aside from the partial or maybe it was complete study that you have destroyed, have you made any study as to where TWA in any of the years involved would have scheduled the additional jets which you furnish to it in Exhibit C?

A. No.

Wemple—Cross

The Special Master: You mean by that the segments?

Mr. Hayes: Yes, the routes, whatever the routes were.

Q. In connection with your Exhibit C, your use of additional jets transatlantically, did you conduct any [Tr. 4992] or did you review any market surveys with respect to transatlantic traffic?

A. Yes.

Q. What?

A. I cannot be specific. We had various market surveys that had been put together by TWA from time to time which have gone through our office and have been reviewed by us at various times.

Q. Did they enter into your conclusions in Exhibit C?

A. No, sir.

Q. They did not?

A. They did not.

Q. You mean you just looked at them and you did not use them?

A. We have looked at them from time to time and we have not used them.

Q. They are not in your work papers?

A. They are in long ago work papers.

Q. You mean they too have been destroyed?

A. No, sir.

Q. What happened?

A. They were not in the papers that were a part of this study. They were not reviewed as a part of this [Tr. 4993] study. I was answering the question perhaps too literally.

Q. They have not been destroyed?

Wemple—Cross

A. No, sir.

Q. They have not been supplied to us?

A. That's correct. And they were not used as a part of this study.

Q. What purpose did you have in reviewing them if you were not going to use them?

A. Well, at the time we put together this February 16, 1962 report, or rather I should say in the months prior to our putting together that report and other studies that we have made of TWA—

Q. By the February 16th you are referring to Defendants' Exhibit 214?

A. I'm not sure. Yes, yes, that's right.

Q. Go ahead, Mr. Wemple.

A. In the course of the work to develop that report and prior reports, we were given market surveys by TWA on various occasions.

Q. The market surveys you are referring to you used in connection or you reviewed at least in connection with the preparation of Defendants' Exhibit 214?

A. Yes.

Q. In no sense did you use them in connection with [Tr. 4994] the preparation of Exhibit C or any other part of your report in this proceeding?

A. That's correct.

Q. Are there any other data that you used in any way other than what we can find in your report or work papers in connection with the tabulations which you set forth in Exhibit C?

A. To the best of my knowledge, we have made reference to all of the basic data that we used in this report, and

Wemple—Cross

in its various volumes, and we have given you the work papers that apply directly to these calculations, and there are no others.

• • • • •

[Tr. 4999] • • • Q. Did it occur to you that making a study on a segment basis would be more accurate?

A. I have tried to do studies on a segment basis from time to time over the years, and they involve such complications that I am very, very skeptical as to their overall accuracy.

Q. It is preferable to use the broad brush?

A. For one thing, passenger traffic data between—for particular segments is available only in samples taken in these—this period during certain times of the year, and then later—correction—and later changed to a small [Tr. 5000] sample throughout the year.

Q. Describe the sampling device, if you will, and who published it.

A. The CAB publishes an origin designation study each year, and it requires the airlines to submit certain traffic data collected either at a given period in a given month or sampled throughout the period.

Q. What is the sampling technique, do you know?

A. I know that an airline must report its actual passengers carried between various pairs of cities during the period selected for the study.

Q. You mentioned sample. What sample are you referring to, Mr. Wemple?

A. The sample that the airline reports to the CAB.

The Special Master: Sample days?

The Witness: Sample days and sample flights.

Wemple—Cross

Q. Sample flights?

A. And sample days.

Q. How were the sample flights chosen, do you know?

A. No, sir.

In fact, it is my recollection it is all flights but a few sample days.

Q. Did TWA have available to you data for each flight and segment showing number of passengers, frequency, Tr. 5001] et cetera?

A. I know that TWA has those data available. We did not ask for them.

Q. And you did not use them?

A. That's correct.

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[Tr. 5005] * * * Q. Do you have Defendants' Exhibit 218 for identification before you, Mr. Wemple?

A. I do.

Q. Do you recognize it as a copy of a letter which you sent to Mr. Leslie on or about the date it bears?

A. I do.

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Q. Do you know how your retainer for this particular assignment came about, Mr. Wemple?

A. My recollection is that Mr. Leslie telephoned me and asked me to be present at a meeting at TWA. Now, as to why he telephoned me, I do not know.

Q. You mention in your letter in the second paragraph of the first page that you will do everything possible to Tr. 5006] complete the first phase of your study by the end of March so that the investment bankers can hold pre-

Wemple—Cross

liminary discussions with insurance companies and others respecting the financing program.

Who were the investment bankers referred to here?

A. According to my memory, Dillon, Read was represented, Lazard Freres and I believe Lehman Brothers in the meeting I attended, which was prior to this March 13th letter.

Whether there were other investment bankers involved, I have no recollection.

Q. Can you tell us who the insurance companies referred to in your letter were?

A. I don't believe I knew who they were.

Q. Did you ever find out?

A. I have no specific knowledge on that point, no specific recollection.

.

[Tr. 5012] By Mr. Hayes:

Q. When you were first retained in connection with the study in March of 1959, the plan was for TWA to have a 63-plane fleet, was it not?

A. At the time we were engaged at that first meeting I attended, I did not know how many planes TWA planned to acquire, and it was, as I remember, perhaps a week or ten days after that before I found out how many planes they did specifically plan to acquire.

Q. When you did find out for the first time, what was the number?

A. My recollection is that it was 63.

Q. Did you begin your study based on a 63-plane fleet?

Wemple—Cross

A. We began our study without information on the number of planes in the fleet. Within, as I say, about perhaps ten days after we started our study, we were advised that it would be a 63-plane fleet, insofar as their forward jet plans were concerned.

Q. After you learned it was to be a 63-plane fleet, did you continue your study based on a 63-plane fleet?

A. We continued our study, not necessarily with respect to a 63-plane fleet. Our study was primarily a review of their method of forecasting in the early stages.

[Tr. 5013] Q. Did they forecast on the basis of a 63-plane fleet?

A. I could not find a close correlation between their forecast methods, as we found them in the first couple of weeks of our study in March 1959 between numbers of aircraft and the revenue that they were forecasting.

Q. Would you look at the fourth page of Defendants' Exhibit 219, Mr. Wemple?

A. What is the heading or the first sentence or something on the fourth page?

Q. "Financial Forecast, Basic Assumptions, No. 1 Equipment."

A. Yes, I have it.

Q. The copy we were supplied shows fourteen 131s changed in handwriting or written above it, fifteen, assigned to domestic service; eighteen, of which eight are assigned to domestic mixed service and ten to international mixed service, and thirty 880s assigned to domestic, all first-class service, delivery schedule summarized on Schedule IV-A.

Does that refresh your recollection as to the size of the fleet with which your report or study was to be concerned?

Wemple—Cross

[Tr. 5013A] A. This is, as I recall the numbers of aircraft that we were advised on as we began our study.

Q. Was the forecast that you studied based on those numbers of airplanes?

A. The numbers of airplanes changed in the course of our study.

[Tr. 5014] Q. I understand that. Originally, did you begin your study based on the numbers of airplanes and the mix of airplanes that I have just called to your attention?

A. And I thought I had responded to you that these are the numbers of airplanes, including the 14 or 15 of the 131s that we were advised on as we began our study.

Q. The forecast which is contained in Defendants' Exhibit 219 is concerned solely so far as jets are concerned with the 63 plane fleet as I read it to you, is it not?

A. I have not read this document—

Mr. Tenney: The exhibit speaks for itself. I think we ought to be able to avoid—

Mr. Hayes: Sure. I thought maybe Mr. Wemple would remember what he did.

Q. You mentioned that there was a change in the number of planes, did you not?

A. Yes.

Q. When did that change take place?

A. There was a change in the number of 131s at the very outset. We could not get a firm answer as to whether it was going to be 14 or 15, and this was apparently a matter that was being discussed within TWA, [Tr. 5015] and my recollection is that it was about a week after we started

Wemple—Cross

our study that someone advised us that it would be one or the other, and frankly I have forgotten which they advised us it would be.

Then my recollection is that somewhere about the middle or early April we were given another set of aircraft as being what TWA was then planning to obtain.

Q. You were given by whom?

A. Probably Mr. Henry Fellows.

Q. Of TWA?

A. Of TWA.

Q. Did you have any conversation with anyone else with respect to the reduction of the number of aircraft?

A. I believe I remember telling Mr. Leslie that until TWA decided on what its future fleet was we would have to suspend work on our study.

And I think further I remember complaining to Mr. Leslie that I couldn't find out whether it was going to be 14 or 15 B-131 aircraft.

Q. Do you recall how long that uncertainty continued?

A. Well, the uncertainty respecting 14 or 15 B-131 aircraft I believe lasted for perhaps a week, maybe ten days, the first part of our study.

[Tr. 5016] Then the—

Q. Then it was resolved at what number?

A. I don't remember.

Q. Go ahead.

A. Then, the major change came during the first two weeks in April, as I remember. It was about the first of April when we were told there was going to be a change in the fleet or we were told that the fleet was up in the air, would we stand by until they decided.

Wemple—Cross

And then as I remember it, it was about in the middle of April that we got the revised numbers and proceeded with our study.

Q. What were the revised numbers?

A. If I remember, it was twenty CV-880, probably fifteen B-131 aircraft, and—I don't remember the exact number of B-331 aircraft.

Q. Was it ten?

A. Ten or twelve are the two numbers that float through my mind.

Q. You mentioned that you told Mr. Leslie you would have to suspend your study. How long was your study suspended?

A. A week or ten days as I remember.

Q. By mid-April you had learned roughly of the reduced program?

A. Yes.

Q. I show you Defendants' Exhibit 64 in evidence, and I ask you if you recognize it.

A. Yes, I recognize it.

Q. The initials of the dictator appear to be JES.

A. That is correct.

Q. Who was that?

A. That is John E. Slater who was a partner of our firm at that time.

Q. Was he as well as you in on this study?

A. He was assisting me with this study.

Q. What, if any, connection did you have, Mr. Wemple, with Defendants' Exhibit 64?

Wemple—Cross

A. I consulted with Mr. Slater on the writing of this letter, reviewed the text and agreed that this—these were proper statements to make.

Q. How far had your studies gone at that time?

A. By calendar they had been under way since March 13th or a few days before.

The number of aircraft that are listed here to my recollection had been determined in the early part of April, by the middle of April, and we had made progress with the review of TWA's detailed schedules for the operation of this particular jet fleet for the second following year, which would have been 1961.

And I judge from the reading of this letter that that review of the estimates for 1961 included profit figures and cash flow figures.

Q. At any rate your studies had progressed to the point where you and your partner, Mr. Slater, felt that you could make the statements contained in Defendants' Exhibit 64?

A. That is correct.

Q. I show you, Mr. Wemple, Defendants' Exhibit 63 in evidence, a financial forecast prepared by TWA under I suppose, A. V. Leslie, Senior Vice President and Treasurer, for 1959 to 1961.

Did that financial forecast, Defendants' Exhibit 63 come to your attention?

A. I believe so.

Q. Do you know whether Defendants' Exhibit 63 was at one point delivered to the investment bankers?

A. I cannot remember knowing that it was.

Q. Let me go back for a moment to Defendants' Exhibit 64, the letter to Mr. Thomas from Mr. Slater.

What was the occasion for the writing of that letter, Mr. Wemple?

Wemple—Cross

[Tr. 5019] A. As I recall, Mr. Thomas telephoned either Mr. Slater or me and asked us to write a letter of comment respecting the adequacy of the numbers of the jet aircraft that they were proposing to obtain.

Q. Did you have any conversation with Mr. Thomas in connection with the number of the aircraft proposed to be acquired?

A. Other than in that telephone conversation, if I was the one that received the phone call, and I don't remember whether I was or not.

Q. Was that the only time you spoke to Mr. Thomas on the subject of a reduction?

A. Yes, sir.

Q. Did Mr. Thomas say anything to you at that time with respect to the getting a smaller fleet and waiting for better equipment?

A. No, sir.

Q. Did you know—you did know, I assume, that by May of 1959 the fan jet was known to be in existence?

A. I have no specific recollection on that point.

Q. Didn't you keep in close touch with the developments in the airline industry?

A. I follow the developments in the airline industry.

[Tr. 5020] Q. Did you not know that the fan jet was first announced, if I remember rightly, by Convair in 1958?

A. I probably did.

Q. You had heard of the 990, had you not?

A. I have heard of the 990.

Q. Did you know that was a fan jet airplane?

A. I know it is a fan jet airplane.

Q. Did you know that American had placed orders for it with Convair in 1958?

Wemple—Cross

A. No, sir.

Q. Did you know that Boeing had announced fan jet versions, I believe, in late 1958 or very early 1959?

A. I recall that Boeing announced fan jet versions.

Q. At or about the time I mentioned?

A. At about that time, yes.

Q. Did you have that knowledge at about the time of the May 6th letter—

A. I probably did.

Q. —Defendants' Exhibit 64 was written?

A. I probably did.

Q. But you don't recall about Mr. Thomas making any statement about getting a smaller fleet initially and waiting to acquire later advanced aircraft?

[Tr. 5021] A. Mr. Thomas made no such statement to me whatsoever.

Q. Returning now again to Defendants' Exhibit 63, the May 15th forecast—

A. Yes.

Q. —I don't know whether I have asked you or not—I have honestly forgotten—whether it was part of your assignment to make a study of Defendants' Exhibit 63.

A. We made considerable study of TWA's financial forecast dated May 15, 1959, which this appears to be.

Q. I show you, Mr. Wemple, Defendants' Exhibit 15 for identification, a letter dated June 26, 1959 from you to Mr. Leslie with the word "Draft" on top of the first page, I think on all the pages if I remember rightly.

Do you have it before you?

A. Yes, I do.

Q. Do you recall whether Defendants' Exhibit 15 for identification was prepared by you or under your supervision?

Wemple—Cross

A. It was prepared under my supervision.

Q. Do you recall to whom the draft report was sent?

A. Mr. Leslie.

Q. Was it sent to anybody else?

[Tr. 5022] A. Not by me.

Q. Did anybody else send it to anyone else, do you know?

A. Mr. Leslie gave it, as I remember, to certain banks that were interested in TWA.

Q. Did he send it to any insurance companies, do you know?

A. I have no knowledge on that subject.

Q. Did you attend any meetings at which Defendants' Exhibit 15 for identification was reviewed?

A. I do not recall any.

Q. Do you recall a meeting on July 22, 1959, that you attended and also present were Mr. Leslie, Mr. Wadsworth, Mr. Flanagan, Mr. Schaenen, Mr. Stewart, Mr. Sherman and Mr. Kerr?

A. Yes, I remember that meeting.

Q. Will you identify, please, Mr. Wadsworth?

A. Mr. Wadsworth was of Dillon Read.

Q. Mr. Flanagan?

The Special Master: Dillon Read.

Q. Mr. Schaenen?

A. I guess he was Lehman Brothers or Lazard Freres.

Q. Mr. Stewart?

[Tr. 5023] A. Mr. Stewart was Lazard Freres perhaps.

Q. Mr. Sherman?

A. Perhaps Dillon Read. I am not sure.

Q. Mr. Kerr?

A. Irving Trust Company.

Wemple—Cross

Q. At that meeting was Defendants' Exhibit 15 or its contents reviewed?

A. I have no recollection whether it was or not.

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Q. As of the date of that meeting, what was under consideration was a 45 plane fleet, was it not?

A. I don't remember.

Q. I direct your attention to Defendants' Exhibit 15, Mr. Wemple, the table on the lower half of the first page. When I said 45 planes I was talking only of jets.

A. I realize that.

Q. It was a 45 plane—

A. The table on the—

[Tr. 5024] Q. Page 2 of Defendants' Exhibit 15, the lower half.

A. Page 2, yes, shows 45 jet aircraft.

Q. Do you know when it was decided that the number of 331s TWA would receive was increased from ten to twelve?

A. No, I don't remember that.

Q. In the course of these studies you made in the early part of 1959 and into July of 1959, did you have any discussions with any TWA personnel other than Mr. Thomas as to which you have told us respecting the adequacy for TWA uses of the 45 plane fleet?

A. The adequacy of the fleet was not within the scope of our engagement. I had no comments with anybody about it.

Q. Did you have any discussions with Mr. Leslie concerning the subject?

A. No, sir.

Q. Mr. Cocke?

A. No.

Wemple—Cross

Q. Do you know Mr. Cocke?

A. Oh, yes.

Q. Mr. Rummel?

A. No discussions.

[Tr. 5025] Q. Defendants' Exhibit 15—you still have before you, do you not, Mr. Wemple?

A. Yes.

Q. —which is devoted to the 45 plane fleet concludes the last page with an expression of your belief that TW plan of operation for 1959-1961 is sound, and that income estimates which are a part of the financial forecast of May 15, 1959, have good prospect of realization.

That was the honest opinion I take it of yours at that time?

A. I call to your attention the first word of that sentence which is "Accordingly we believe" and then go on with your statement. That was my opinion at that time.

Q. I don't know what that changed in my question. Maybe you do.

Mr. Tenney: Maybe Mr. Wemple might explain.

Mr. Hayes: If he wants to, he can go ahead. I don't care.

A. There are a number of concluding remarks starting on page 48 which, in effect, emphasize things like deliveries, favorable condition of economy, particular [Tr. 5025A] plan of operation, and our judgment was based on those qualifications being realized, that is all.

Q. Certainly. I was not trying to read those out of the report, Mr. Wemple. I am the one who offered it.

A. Thank you.

[Tr. 5026] Q. So I offered all of it, including all the

Wemple—Cross

qualifications. It is significant to me that plaintiff did not offer it.

Did you in May or June or July of 1959 receive any information as to negotiations between the Tool Company and Pan American with respect to the transfer of contract rights to six of the 331s to Pan American?

A. No information was received by us.

Q. I refer to the meeting which was held on July 22nd which you attended with the gentlemen whom we have previously identified. At that time, at that meeting, was anything said about the need for disposing of the ten extra Convairs and the six extra Boeings?

A. I recall no such conversations.

Q. Nothing at all said so far as you can recall?

A. I have no recollection about that.

Q. Did it ever come to your attention that when the Tool Company arranged to assign its rights to six 331s to Pan American Mr. Thomas consented to such transfer?

A. I have no information about that subject.

Q. Did it ever come to your attention that the TWA board approved Mr. Thomas' consent to the assignment?

A. I have no information on that.

[Tr. 5027] Q. When did you first learn that the Tool Company had assigned six 331s to Pan American, the contract rights to them?

A. I have no idea when I learned that.

Q. Did you ever learn that the Tool Company, by arrangement with Convair, agreement with Convair, arranged to have six 880s leased to Northeast?

A. Would you repeat the first part of that question?

Q. I will rephrase it.

Did it ever come to your attention that by arrangement

Wemple—Cross

among the Tool Company, Convair and Northeast Convair leased six 880s to Northeast?

A. I believe that I read that in trade publications about the time it was announced.

Q. You did not have any other information regarding it?

A. No other information.

Q. Prior thereto, had you learned about the proposal for a TWA-Northeast merger?

A. I had heard that mentioned periodically for quite a number of years.

Q. Among TWA personnel?

A. Yes.

.

[Tr. 5039] Q. You knew, of course, they were leased from the Tool Company, did you not, or didn't you?

A. I have heard that.

Q. Did you make any inquiry to learn whether there was any time lag between the acquisition of the planes by the Tool Company and the Tool Company's leasing them to TWA?

A. I have no knowledge of that.

Q. Did you make any inquiry as to how the rental rates were fixed for the planes?

A. No.

Q. Do you know what the rates were?

A. No.

Q. You made no inquiry to determine them?

A. At one point I knew what they were per month or whatever it was. I do not know what that is now.

Q. Did you make any inquiry as to the reasonableness of the rental rates?

A. No.

Wemple—Cross

[Tr. 5080] Q. Did you also assume, Mr. Wemple, in connection with Chapter II that with the exception that TWA would not lease five 331Bs which you have already mentioned, the remainder of the TWA long range fleet would remain the same?

A. If I understand your question correctly, would remain at 18 aircraft during the period 1959 through 1963?

Q. I am talking of the whole fleet, the leasing of the 720Bs, the purchase of the 131Bs.

A. My question was based on the grouping on page 4 wherein the B-331 and B-331B were considered very long range. I believe I misunderstood your question as to how you wanted me to characterize the aircraft.

Q. I was not thinking of the definitions you had on page 4. Let me put it this way:

Did you further assume that aside from the item you have already mentioned that TWA would not have leased the 331Bs, that the remainder of the jet aircraft would be the same as it historically was, plus the six 331s?

A. We set forth on page 3 the details of our assumptions, and I believe my answer is yes to your question for the period 1959 through 1963.

Q. That is the only period we are talking about.

[Tr. 5081] A. That is correct.

Q. What was the factual basis for your assumption that if TWA had received the 331s, it would not have leased the 331Bs.

A. TWA did not add to its fleet of very long range aircraft until some time, I believe it was in 1965.

When I make that statement, I mean very long range aircraft used for passenger service. There was some all cargo aircraft that came in in the meantime which I have not included in this particular report.

Wemple—Cross

Secondly, that TWA used the 331 aircraft for very long range fleets, that it also—correction—for very long range flights on which it also used the B-331B aircraft.

Those are the principal historical facts that I used in making the assumption in this period through 1963 TWA would have held its fleet of very long range aircraft at the 18.

Q. Just those two facts and nothing else?

A. Those are the principal ones.

Q. Were there any others?

A. None that I can recall.

.

[Tr. 5158] The Special Master: Proceed.

By Mr. Hayes:

Q. Mr. Wemple, in connection with your displacement of the 331Bs which were fan jets by the 331s which were non-fans in your report, did you consider at all the extent to which TWA's competitors were using fan jets rather than non-fans?

The Witness: Would you repeat the question, please? Read it back.

(The question was read.)

A. I considered it briefly and found that it was—had no effect on our estimates and, therefore, did no further consideration of it.

Q. Tell us the extent of your brief consideration.

A. That TWA would have been able to operate its international services with the 331s insofar as the general public is concerned, as effectively as it would have—could have operated them with the 331B aircraft. And, therefore, TWA would have every reason to have expected just

Wemple—Cross

as much revenue from a 331 aircraft on a particular flight as it did from a 331B aircraft. I mean that, of course, transportation revenue or operating revenue.

The Special Master: Net?

The Witness: Gross. Well, net after dis- [Tr. 5159] counts on tickets sold, but transportation revenue.

So, therefore, it seemed to me perfectly reasonable to do the calculation on the basis of a straight substitution of one plane for another.

By Mr. Hayes:

Q. You told us what your conclusion was as to why you sort of rejected the comparison with its competitors so far as fans and non-fans were concerned.

What were your reasons? What facts did you base your conclusion on?

A. As shown by TWA's employees' timetable, TWA used 331 and 331B aircraft on its longest range flights, and, for instance, operated nonstop between New York and Rome with each aircraft.

Q. Is there anything else on which you base that conclusion?

A. No, that is all.

Q. That is everything?

A. I mentioned yesterday they are aircraft of approximately the same size with no particularly distinguishable features on account of one being a 331B and another being a 331. I believe they are both equipped to show movies, they both have the same kind of seats, they both serve the same food and drink.

[Tr. 5160] Q. You mentioned this in connection with the international service.

Wemple—Cross

Did you make any kind of a study as to the use of fan jets by TWA's domestic competitors?

A. I certainly have read American Airlines' advertisement respecting, I guess its complete use of fan jet aircraft. Neither United nor TWA appear to feature that aspect of their aircraft in their advertisements, and I believe, therefore, it is of no import in the determination of revenues that could be expected on a given flight, whether it be operated with a 331 or a 331B aircraft.

Q. Do you mean by that answer that you have made a detailed examination of the advertising of American, United and TWA during the period of your calculations?

A. I do not.

Q. If you have not made any such study, are you in a position to testify that United did not advertise the use of fan jets?

A. No, I am not.

Q. Or that TWA did not advertise the use of fan jets?

A. No, I am not.

Q. Have you any opinion as to whether advertising [Tr. 5161] plays an important or an unimportant part in attracting passengers to airplanes?

A. I believe advertising plays an important part in attracting passengers to an airline.

Q. If you reviewed any of the advertising, have you noticed that various airlines have over the very period covered by your report advertised their use of the new and the advanced, and other such adjectives, fan jets?

A. As I mentioned before, I am familiar generally with American Airlines' advertising of their fan jet aircraft.

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[Tr. 5162] . . . Q. Do you know what fan jet equipment Pan American had during the period of your report?

Wemple—Cross

A. As is set forth on page 10, Pan American got—correction. As set forth on page 2, TWA got fan jet very long-range aircraft commencing in November 1962.

My recollection is that American got them somewhat earlier than that. I do not remember the exact date.

Q. Do you recall how many fan jets Pan American acquired during the period covered by your report?

A. No, I do not.

Q. Did you make any inquiry as to what fan jets were used by foreign airlines competing with TWA on the transatlantic routes?

The Special Master: Would that be sig- [Tr. 5163] nificant, so far as his report is concerned?

Mr. Hayes: I think it would.

The Special Master: In what way? In the way of expenses or operating revenue?

Mr. Hayes: Yes, we have already been told that the fan jet is a cheaper airline to operate; its fuel costs are lower. I think before we are finished, we will find there are other advantages to it.

The Special Master: Would the competition with the foreign airlines be important here?

Mr. Hayes: Certainly, because they were all running on the same routes. Not all of them.

The Special Master: I thought all the comparisons we have been using up to date were Pan American on the international route and American on the—

Mr. Hayes: That is what the plaintiff has decided to use, but there are other approaches, too, besides using Pan American. And, as a matter of fact, Mr. Wemple in his report here shows the figures for

Wemple—Cross

foreign air carriers from IATA statistics. They all have a bearing on his report.

Mr. Williams: The difference in expenses [Tr. 5164] is fully reflected in the report and as far as the revenues are concerned, he has already testified and explained that.

Mr. Hayes: I don't think we even talked about it.

The Special Master: Revenues to TWA?

Mr. Williams: Yes.

Mr. Hayes: He just testified as to figures. We have not examined him on it.

By Mr. Hayes:

Q. My question was did you make any study of what fan jets were operated by any of the foreign carriers competing with TWA transatlantically?

A. In the period of these estimates?

Q. That is right.

A. No, sir, no specific study of that point.

Q. On the domestic scene, did you make any inquiry as to what fan jets were being operated by competitors of TWA?

A. I have looked at lists of aircraft by other airlines from time to time, and I am sure that some of those lists had in them data as to—for instance, the fan jets that American was operating. I have made no particular specific study of that subject.

[Tr. 5165] Q. Are those lists still in existence?

A. No, sir.

Q. They, too, have been destroyed?

A. Some of them may be in some of those previous studies which you brought into the picture last week—our June 1959 study, for instance.

Wemple—Cross

Q. There were no fan jets in existence then, Mr. Wemple.

A. That is correct.

Q. I am talking of the period of your report and the use of fan jets by TWA's competitors during that period.

A. I don't recall any in the 1962 study.

Q. You do not recall any?

A. I do not recall any.

.

[Tr. 5171] Q. A table?

A. Yes.

We go on to show that TWA will have a unique advantage in percentage of its seats being in jet aircraft during that period and that that advantage dissipates by the end of 1961.

Then on page 31, we show certain information on the jet aircraft ordered by TWA for international service and by other airlines involved in transatlantic.

For instance, we show there that Pan American had ordered for the Atlantic Division eleven jet aircraft and had six on hand for a total of 17. BOAC had ten on hand and it ordered 15 for a total of 25.

Whereas, TWA had only eight on order.

Then we go on on page 32 to further discuss—

Q. Who did you say had a total of 25?

A. BOAC, sometimes pronounced BOAC, the third line.

Q. Jet aircraft. I see 15

A. On the right hand side—they had ten on hand as of April—

Mr. Williams: 15 on order?

The Witness: 15 ordered.

Mr. Hayes: I see. I get it. I was look- [Tr. 5172]
ing for the figure 25.

Wemple—Cross

The Witness: No, sir.

Then we go on on the next page to talk about—more about jet aircraft on order.

The Special Master: Is there anywhere an expression of opinion or judgment on your part as to the adequacy of TWA's program of acquisition of additional jets?

The Witness: There is no specific statement on that. I believe it is easily understood as you read this report that more jet aircraft were going to be required by TWA to keep up with the competition and with the fleets of others.

The Special Master: But it does not say anything one way or the other.

The Witness: It does not specify it.

The Special Master: Do you know of any other study by the firm—

The Witness: No, we did not.

The Special Master: —covering this period that would express such an opinion one way or the other?

The Witness: There is the letter—what is the date—May 5th or thereabouts or May 14th [Tr. 5173] that was brought in yesterday wherein we relate to the—we refer to our conclusion that as far as adequate financial results what TWA had on hand would give them, but no—definitely no broad based study to specify specific additional numbers of aircraft in this period.

The Special Master: Thank you.

Q. You don't mean what TWA had on hand? You mean what TWA had on order.

The Special Master: On order, yes.

Wemple—Cross

A. Had on order. Planned to receive.

Q. Did I understand you to say—I may have misunderstood you—that Defendants' Exhibit 15 indicated that TWA should acquire more jet aircraft?

A. In my opinion, as you read Exhibit 15, you will come to the conclusion that TWA is not as well covered with additional aircraft as its competitors, and that the future program that is likely to develop will include more jet aircraft by TWA.

There is no specific statement pointing that up.

Q. There is no recommendation as to how many more jet aircraft TWA should order, is there?

A. We were not asked for any recommendation as to [Tr. 5174] future acquisition of aircraft by TWA.

Q. You forecast profits with the operation of this 45 plane fleet, did you not?

A. TWA's financial forecast dated May 15, 1959, shows cash flow fully adequate to take care of its commitments for operating expenses, interest and principal repayment.

.

[Tr. 5182] . . . Q. The question is do you recall whether or not there was in fact during the period covered by your studies here an excess capacity of aircraft, either domestic or international or both.

A. All aircraft or jet aircraft?

Mr. Williams: Jet aircraft.

Q. Jet aircraft.

A. I do not recall any excess capacity of jet aircraft in this period, and my approach to the thing would be with reference to operating profit.

Q. Your study assume, does it, based on what you just

Wemple—Cross

said, that at no point during the period covered by your study was there in existence an excess of capacity?

A. Our study—I have to go back. Study 4C?

Q. That is right.

A. —shows simply the additional operating profit that TWA would have made for each of these various [Tr. 5183] conditions, and it does not specifically treat with any excess or deficiency in—it just doesn't treat with the excess capacity matter at all.

Q. You did not consider any bearing that an excess capacity may have had on the results that you obtained in any one of the years covered by your study?

A. From my point of view, there was not an excess of capacity in those years.

Therefore, I could not have considered it.

* * * * *

[Tr. 5212] Q. Take TWA to begin with.

Did you make any study of the factors TWA management considers in assigning additional aircraft of the same kind as aircraft it already has in possession?

A. I did not make a specific study.

The Special Master: You had studied some of the factors before then.

The Witness: I have. I generally am familiar with things that are considered, but in answer to his question I made no specific study.

Q. No study of any kind, is that correct?

Mr. Williams: He made no specific study.

Mr. Hayes: I want to know what studies, if any. If he made a general study, I would like to know what the general study was.

Wemple—Cross

The Witness: As I remember yesterday, I testified that we had done a number of preliminary calculations using various factors for allocation between domestic and international.

We, of course, studied what TWA had done throughout the period of our damage calculation, and it was with reference to that study and to those considerations that I chose to make the allocation of the additional aircraft exactly as TWA had allocated its then operating fleet.

Q. Was your reference just now to studies you had made to the first endeavor you made to reschedule the additional planes?

A. No, sir.

Q. What was it referring to then?

A. To preliminary calculations that we made prior to publishing of this final report.

Q. Where are those preliminary calculations?

A. They are discarded because they were not used in the development—in the final damage results which are set forth here.

Q. They too have been destroyed?

A. That is correct.

Q. Pursuant to the same instructions?

A. Pursuant to the same instructions, plus my practices.

Q. At any rate, whatever these studies were, they formed no part of your report?

Mr. Williams: That isn't what he said.

Mr. Hayes: He testified previously, Mr. Williams, last week, that he has preserved all work pa-

Wemple—Cross

pers which eventuated in his report. These have been destroyed.

[Tr. 5214] Mr. Williams: If your Honor please, the questions that I thought counsel was addressing to the witness was what studies, whether they were specific or general, which he had made, which was the basis of his previous statements contained in this report, and he has just reported certain general studies, at least I would define them as general studies, and I think that answers your question.

Mr. Hayes: I did not ask you, Mr. Williams. I am asking the witness. Let us get the witness' answer.

Q. Are these general studies reflected anywhere in your report?

A. These general studies had no direct contribution to the calculations in our report.

Q. What indirect contribution did they have?

A. Insofar as—

The Special Master: The witness has already testified that on the basis of these preliminary studies he gained certain information as to TWA's practices, as I understand his previous answer, and undoubtedly that information went into the formation of his judgment on this particular point.

[Tr. 5215] Maybe I am wrong but that's the way I would summarize the testimony on that point.

Mr. Hayes: Maybe you are right. I would like to know what the information is then.

Mr. Williams: The witness has stated what it is.

The Special Master: He gave the various factors.

Wemple—Cross

Q. Can you be more specific than to say you made a study?

Mr. Williams: Can you add to the testimony you have already given?

A. I thought that I had outlined the general types of calculation—correction. I believe I did outline that we had made calculations on different selected allocations between domestic and international. I do not remember exactly what they were.

I also mentioned that we, of course, reviewed this historical information which is set forth in Exhibit B, and that that was considered in making the judgment as to how we would make the allocation for the additional six.

I cannot give you specific instances.

Q. Can you describe the different methods of allocation as to which you made calculations?

A. I believe I mentioned one that comes to my mind wherein we use a two to one allocation for a preliminary calculation.

Q. Two for what and one for what?

A. Two for domestic and one for international.

Q. Any others?

A. That's the only one I can remember.

Q. Let us leave TWA for a moment and look at TWA's competitors.

In making your allocation between domestic and international, did you make any study of the competition that TWA would face internationally?

A. I do not understand your "would face."

The competition that TWA did face in this period is a matter of record.

Wemple—Cross

Q. Did you make a study of competition being offered to TWA internationally and use the results of that study in connection with your allocation of the additional 331s to the International Division?

A. No.

Q. Did you make any study of the availability of international traffic during the period covered by your damage calculation?

[Tr. 5217] A. As set forth on page 21 we tabulated transatlantic passengers carried by TWA, Pan American and various foreign airlines.

Q. That is what had been carried in the past?

A. That is what was carried during the period of our study.

Q. Did you make any calculation to determine what additional traffic over and above what had been carried was available?

A. We assumed for our calculations that there would have been no additional total number of transatlantic passengers because in my opinion that gives a most conservative calculation of additional passengers and revenue for TWA.

Q. Is it your basic assumption throughout the whole period of your damage study that the total number of transatlantic passengers would remain the same?

A. That is the assumption on which we based this calculation.

Q. Did you make any study as to whether TWA management, if it knew just exactly how many transatlantic passengers were going to be carried, would assign the six 331s on the same basis that the twelve 331s had been assigned between divisions?

Wemple—Cross

[Tr. 5218] A. No study.

Q. If I asked you the same kind of questions with respect to the domestic allocation, would your answer be the same?

A. Our domestic calculations are predicated on no increase in total domestic passengers carried by domestic trunk airlines.

Q. No, would your answer be the same with respect to any studies you made with respect to what frequency competitors were offering?

A. I am afraid you will have to ask me the question.

Q. All right.

So far as your allocation to domestic was concerned, did you make any study as to the competition TWA would meet on its domestic routes?

A. What do you mean by "would meet on its domestic routes"?

Q. That in fact it had to meet. This is history.

A. At one point, I reviewed flights operated by other airlines between certain points. I do not now remember the cities I selected or which airlines.

We did make such a study.

Q. Did you use it in any part of your damage [Tr. 5219] calculation?

A. We did not.

Q. Has that study been destroyed, too?

A. Yes.

Q. Did you make any study to determine whether the TWA management, assuming it knew just what frequencies were being offered by its competitors and what traffic was, in fact, carried or expected to be carried, would have allocated to the Domestic Division the number of that portion of the additional six 331s which you in your studies have allocated to the Domestic Division?

Wemple—Cross

Mr. Williams: May I have that question read, please?

(The question was read.)

The Witness: May I have just the first part of that question again?

Mr. Williams: It is a little complicated but I think it is all right. Just let's have it once more, the first part of it.

If the witness can understand and answer it, I have no objection.

(The question was read.)

A. No such study.

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[Tr. 5282] . . . Q. So Exhibit B does not include as available for commercial service a plane, for example, that was used on a charter flight?

A. No, you—

Q. I just misunderstood you then.

A. There is a misunderstanding.

Q. Would you explain it, please?

A. Exhibit B includes aircraft available for commercial service in accordance with the terminology that we have used.

Exhibit B does not include miles of any particular flight. Exhibit B is simply aircraft.

Now, where we state here on page 14 the plane miles in International Division operated with jet aircraft, none of the all-cargo flights of jet aircraft are included in there. None of the ferry flights or non-revenue flights are included in there.

Q. How about charter flights?

A. Charter flights are included in there.

Wemple—Cross

Q. Charter flights are included?

A. Yes.

Q. Have you any knowledge or did you make any determination as to the percentage of the jet plane miles [Tr. 5283] which you set forth in the table at the bottom of page 14 were chartered flights?

A. We made some calculations from time to time of that.

Q. Do you have those calculations?

A. No, sir.

Q. Have they been destroyed?

A. That is correct.

Q. So you have no information as you sit here as to the extent to which these plane miles were flown on charter flights?

A. That is correct.

Let us say, Mr. Hayes, I cannot give you statistics as I sit here. I know where the information resides, which is perhaps a more complete answer to your question.

Q. It is not in your report?

A. That is correct.

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[Tr. 5286] . . . Q. What was your reason in rejecting the use of separate utilizations for two different kinds of craft?

A. That it was not necessary to classify them separately.

Q. I am afraid that is just telling me your conclusion in different words. I asked for your reasoning.

A. I cannot give you the step-by-step description of the reasoning.

Q. Are the ratios that you have in the table in the upper part of page 15 a measure of the utilization of aircraft?

Wemple—Cross

A. What do you mean by the term "utilization"?

Q. The extent to which aircraft is used.

【Tr. 5287】 A. I asked the question because utilization is often measured in an airline operation in terms of hours per day an aircraft is used for revenue flying.

So, your question apparently is a more generalized term utilization, a less specific one.

Q. Whatever it may be, can you answer it, Mr. Wemple?

A. I will answer it in the generalized context.

Yes, this is a degree of utilization—measurement of utilization.

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【Tr. 5290】 • • • Q. You really do not have any knowledge as to facts which will explain the low ratio that you show for 1959, do you?

A. I made no detailed investigation.

Q. Do the ratios which you set forth on page 15 vary at different times of the year?

A. I do not know.

Q. Did you make any study of that?

A. I don't believe we did.

Q. I cannot find it now, but I have a great habit of not noting the page of your report.

My recollection is that in your report you stated that the ratios were relatively uniform in 1960 to 1963.

Mr. Tenney: Page 15.

Mr. Hayes: Is it 15?

Mr. Tenney: Second line.

Mr. Hayes: That is right.

Q. "Were reasonably uniform" is the language.

I notice on looking at them that the ratios went from .67 in 1959, increased in 1960 to 1.75, 1961 to 1.78 and then de-

Wemple—Cross

increased in 1962 to 1.76 and in 1963 to 1.72 [Tr. 5291] which was less than 1960.

What is the reason for those variations, Mr. Wemple?

A. I'm sure there are thousands of reasons for those variations.

Q. What reasons do you know of some of the thousands of which you are sure?

A. The ratio is the result of schedules that are set up, rather, the demand for charters and extra sections, and other things.

The Special Master: Outside the scope of your report?

The Witness: Outside the scope of our report.

Q. Did you make any studies to determine what factors accounted for the decreasing utilization after 1961 while the jet plane miles were increasing substantially as appears in the same table on the upper part of page 15?

A. As stated at the top of page 15, in my opinion, these ratios for that period 1960 through 1963 are reasonably uniform.

I made no study to determine specific reasons for the change from 1.78 to 1.62.

Q. Did this opinion that you just quoted or was [Tr. 5292] that opinion that you just quoted rather based on a figure other than the close affinity of the ratios as numbers?

A. That is what it is based on as it says in the table.

Q. You use those ratios, do you not, to estimate the additional plane miles TWA would have operated?

A. That's the calculation at the bottom of the page.

Q. That is right.

That is a purely arithmetical procedure, is it not?

Wemple—Cross

A. The calculation is arithmetical procedure.

Q. Does it set forth any opinion of yours other than as to the accuracy of the arithmetic?

A. Yes, it sets forth my opinion that the additional aircraft could have been expected to have been used at the same ratios as the fleet TWA did have and did operate.

Q. So what you are saying then is that if the additional six planes were operated by TWA during the years in question, and if they were operated at the same ratios as the fleet which TWA actually had, the additional number of jet plane miles you calculated would have been flown?

[Tr. 5293] A. That is correct.

Q. That is all you are saying there, is it not?

A. That is what I am saying.

Q. That is the sum and substance of your opinion, is it not?

A. That's the basis, basic opinion, and methodology used for the calculation of these estimates.

Q. This opinion of yours which appears in the calculation at the bottom of page 15 assumes, does it not, that the plane miles would have been added at the average utilization experienced during the year?

A. Yes.

Q. Are you in the table on page 15, expressing any opinion that aircraft can be added and added and added to a particular operation at the same utilization as that at which existent aircraft are operated?

Mr. Williams: You mean added indefinitely?

Mr. Hayes: Yes.

Mr. Williams: You used three added, so I assume that's—

Mr. Hayes: That is what I mean.

Wemple—Cross

A. I did not express that opinion as you have just stated it.

Q. I know you did not express it. I am asking [Tr. 5294] you if that is basic to your calculations?

A. That is not basic to our calculation.

Q. What cut-off point do you have—

The Special Master: I think we have been over this before.

Mr. Hayes: Not in this connection with the plane miles we have not.

Q. Did you establish any cut-off point?

A. I did not.

Q. Do the additional plane miles you show at the bottom of page 15 include charter plane miles or not?

A. Yes, they do include charter plane miles.

Q. To what extent are the plane miles you have added charter plane miles?

A. In the same proportion as the actual plane miles shown at the upper table.

Q. Where do I find the charter plane miles in the upper table?

A. They are not delineated separately.

The Special Master: You mean the answer you gave a few minutes ago from the working paper as to the—

The Witness: Those were not plane miles. Those were numbers of aircraft available.

[Tr. 5295] And they are for another aircraft. They were for the 131.

The 331 plane miles and number of aircraft set forth here include in all facets the charter operation.

Wemple—Cross

Q. Where can I find in your report for any year or for all the years how many of the added plane miles were flown on charter flights?

A. We have not specifically delineated that item. As I have mentioned before, the actual plane miles includes charter miles.

Our calculation of additional plane miles is a ratio calculation which fundamentally includes the same percentage or same proportion of charter flights as did the basic plane miles.

Q. Let me see if I understand you, Mr. Wemple.

Take the year 1960. In the upper half you show 10.7 million plane miles.

Assume for the purpose of the question that one million of those were charter miles, a fraction of somewhere between 1/10 and 1/11.

A. Call it 10%.

Q. Does your answer mean that the added plane miles of 3.6 million in the lower half of the page, you are [Tr. 5296] assuming that the same 1/10 or 1/11 would be charter plane miles?

A. That is correct.

Correction. No.

Q. That is not correct? That is what I thought you said.

A. Your statement is incorrect. There is a twisting of numbers.

At the lower half of the page the figure of jet plane miles is 6.3, not 3.6.

Q. You are right. It is 6.3. But the—

A. The percentage in that 6.3 would be the same as the percentage was in the 10.7.

Q. Did you make any study of TWA's actual operations with respect to charter flights?

Wemple—Cross

A. I have told you that I reviewed their statistics on charter mileage in the various years.

Q. Just the figures?

A. That is correct.

Q. Did you make any study to determine whether TWA was unable to fill any charter commitments that people sought to make with it during any of these years?

A. I did not make such a study. I believe no useful purpose would have been served.

[Tr. 5297] Q. Where in your report can I find the percentage of plane miles flown on charters, actually flown on charters, the number of plan miles which you included in the jet plane miles in the table on the upper half of page 15?

A. It is not set forth in the report.

Q. Is it in your working papers?

A. It is in the TWA operating statistics which are in the cabinet.

Q. Do we have copies of those?

A. I don't know.

Mr. Hayes: Can you tell me what folder it is or otherwise identify it?

We have it.

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[Tr. 5450] * * * Q. Attached to or as part of Defendants' Exhibit 223 for identification are lists of actual jet deliveries with actual piston retirement, *pari passu* jet deliveries and reconstructed piston retirement dates.

You have testified that you did not give any effect to what pistons were actually retired.

My question now is did you in your studies give any weight at all to the pistons stated to have been retired on reconstructed piston retirement dates and [Tr. 5451] relate to delivery of 63 jets?

Wemple—Cross

A. As I recall, I partially or completely answered that question, but let me restate the answer to it.

Q. My questions were about actual retirements. Now I am asking you about this reconstructed.

A. That is my recollection, but let me reanswer it.

I took the reconstructed retirement dates that are listed here, reduced TWA's piston fleets accordingly below what they actually were, checked the capability of those fleets with average plane miles operated per aircraft to cover the piston plane miles that would have been required under his reconstructed operation and found the fleets less the reconstructed earlier retirements would have been adequate to cover the piston operation that remained after the reductions we have estimated in our report.

Q. Is that in your work papers?

A. No, sir.

Q. Destroyed?

A. Yes, sir.

Q. Discarded is probably a proper term.
It is either destroyed or not.

A. It is gone.

.

[Tr. 5481] Q. What statistics for charter are not available from IATA for those years?

A. The number of transatlantic charter flights that were operated by the airlines.

Q. Are there any charter statistics available from IATA for those years?

A. I do not know the answer to that very broad question.

Q. Do you know whether all cargo flights enter into IATA statistics?

A. I do not know whether IATA carries statistics on all cargo flights.

Wemple—Cross

Q. As to the flights that are reported, I believe you said yesterday they were flights between American cities, gateway cities, and European cities, and I think you said that in your report, too, somewhere.

A. That is a statement I intended to make yesterday.

Q. Do you know what beyond gateway flights are?

Mr. Williams: You mean what they mean?

Mr. Hayes: Yes.

A. Yes.

[Tr. 5482] Q. Will you explain what beyond gateway flights are?

A. Considering Paris as a gateway city and a stop on a particular flight, if the flight goes onto Geneva, Zurich, Milan and Rome, the segments beyond Paris would be considered flight beyond the gateway.

Sometimes those are operated with different flight numbers and sometimes they are operated simply as additional segments with the same flight number as is assigned to the transatlantic flight.

Q. I believe you told us the other day that the gateway cities, so far as TWA is concerned, were London, Paris, Rome and Frankfurt.

A. Yes.

Q. Do the IATA statistics include beyond gateway mile-

A. I have not used any IATA mileage statistics. I do not know whether they specifically have that information.

Q. Do the IATA statistics for passengers include beyond gateway passengers?

A. They include passengers who made a transatlantic trip. If that same passenger went beyond the gateway, that

Wemple—Cross

particular passenger is included in the IATA statis- [Tr. 5483] tics we have quoted.

Q. When planes go beyond the gateway, do they pick up additional—I will call them, for the sake of the record—local passengers?

A. Yes.

Q. Do the IATAs—

A. Some do and some do not, depending on the rights of an airline in the countries which they are serving.

Q. Are you acquainted with the five freedoms that are spoken about in air traffic?

A. Yes.

Q. Which freedom is it that has to do with beyond gateway traffic?

A. I thought it was the fourth freedom.

Q. What is the fourth freedom?

A. It is—refers to, for instance, TWA's right to carry a passenger between Paris and Geneva, although TWA did not bring that particular passenger into Paris.

Q. Is there a fifth freedom?

A. I am not familiar with the exact definition of the terms.

Q. At any rate, the IATA statistics do not include as flights or passengers continuations beyond the gateways?

[Tr. 5484] Mr. Williams: Read that again, please.
(The question was read.)

Q. Or do they?

A. I presume you are referring to the IATA statistics we have quoted in our report.

Q. That is right.

A. And as I thought I had just explained that a passen-

Wemple—Cross

ger who travels beyond the gateway may be identified as one of the transatlantic passengers.

Mr. Williams: If he has made the transatlantic flight.

The Witness: If he has made the transatlantic flight.

Mr. Williams: But not otherwise?

The Witness: That is correct.

• • • • •

[Tr. 5487] • • • Q. I am talking about the flights that they are authorized to make. Are there any restrictions with respect to the carriage of passengers beyond the [Tr. 5488] gateways.

A. I believe there are some restrictions, and I cannot quote you the individual restrictions that do apply.

Q. You do not know even the restrictions that apply to TWA or Pan American?

A. I do not know the details of them.

Q. Do you know the nature of the restrictions?

A. From time to time, certain governments will not permit passengers of one sort or another.

I know those crop up from time to time. I do not know the detailed nature of other restrictions that may apply.

Q. What do you mean by passengers of one sort or another?

A. Some of the Middle East governments prohibit passengers of certain religions and nationalities periodically.

Q. Aside from that, do you know of any restrictions that would apply for example from say Paris to Rome?

A. I do not know of any restrictions.

Q. You know of no restrictions?

A. I do not know of any.

Wemple—Cross

[Tr. 5489] Q. But you can't testify that they do not exist?

A. That is correct.

* * * * *

[Tr. 5494] * * * Q. Do you know whether or not there has been or has not been an increase of pure transatlantic traffic as against beyond gateway traffic over the years covered by your report?

A. How would you measure that? (In terms of passenger miles?

Q. Any measure you want to take.

A. It is my understanding that there has been somewhat of a—I withdraw that.

And does your question refer to, for example, the IATA carriers who operate across the North Atlantic or does it refer specifically to TWA?

Q. It refers to TWA.

A. Well, the ratios at the bottom of the page 18 as to flights per plane miles, per International Division plane miles, show a very small change up and down during that period.

Now, if you could please restate the question, I can answer within the limits of the statistics set there on page 18.

If I understand your question—

[Tr. 5495] Q. During the period covered by your report, Mr. Wemple, has there been any change in TWA's operations whereby there has been an increase of straight transatlantic flights, east and west, and a decrease of beyond gateway flights?

If you do not know, say so.

A. I did not know the answer to that specific question.

Q. You did not study it?

A. I did not make those calculations or measurements.

Wemple—Cross

Q. The data upon which you could base such calculations were of course available to you, were they not?

A. The data on TWA's transatlantic flights and beyond the gateway flights are set forth in the employees' timetables which are available to all of us.

Q. Did you make any determination as to whether or not TWA's passengers during the period in question increased in number on pure transatlantic flights but did not increase in the same proportion on beyond gateway flights?

A. I did not measure that.

Q. That data was also available to you, was it not?

[Tr. 5496] A. Those data are not readily available. I probably could have gotten them from TWA's records.

Q. What was the purpose of this ratio which you calculated at the bottom of page 18?

The reason I ask that is that I don't believe it is used in your report.

A. The ratio is not used. The purpose was to support the statement that is ahead of it, to show our source for that particular statement and to identify what we meant by "was relatively uniform."

Q. Other than that, it has no purpose?

A. It is not used further in the calculations.

Q. Suppose you made the division the other way and divided the number of flights into the number of plane miles? You would get the average number of miles per flight, would you not?

A. That is correct.

Q. Have you done it?

A. No, sir.

Q. Do you know, by the way, what the mileage is to the TWA gateways in Europe?

Wemple—Cross

A. My recollection is that it is about 33 or 35 hundred to London. And obviously a little bit further to Paris and a little bit further to Rome than it is to [Tr. 5497] London.

Q. According to your work papers, Exhibit C and C8, Schedule 3-15 of page 4, I found the following mileages:

New York-London, 3,453.

New York-Paris, 3,635.

New York-Lisbon, 3,366.

New York-Frankfurt, 3,858.

New York-Rome, 4,277.

Are those statute miles, do you know?

They are miles I found in your work papers.

A. Just labeled "Miles"?

Q. I don't know whether they were labeled or not.

A. Thank you.

.

[Tr. 5498] . . . Q. There again you made no calculation as to how many plane miles would be involved in beyond gateway flights?

[Tr. 5499] A. Well, I made a calculation as to what TWA transatlantic mileage is of its total International Division mileage.

I do not have the result of that calculation available. It has been discarded.

Q. You mean destroyed?

A. No, sir. I mean discarded.

Q. Is it in existence?

A. It is not in existence.

Q. By "discarded," you mean it is not in existence?

A. That is correct.

Q. You don't mean it is put into a dead file?

A. That is correct. It is not in existence.

Wemple—Cross

And my recollection is that the results of that calculation showed that a very substantial portion, definitely the majority, of TWA's International Division passenger miles—did I make my statement respecting passenger or plane miles?

Q. I have honestly forgotten. I lost you half way through. Start over again, why don't you, Mr. Wemple.

A. Let me withdraw that and start over again.

I made a calculation to determine the approximate proportion of TWA's transatlantic passenger miles is of TWA's total International Division passenger miles, [Tr. 5500] and that calculation showed that the substantial majority of TWA's International Division passenger miles are accounted for by transatlantic flights.

Q. You do not recall the figures?

A. No, sir.

Q. You cannot tell us, for example, the number of plane miles the International Division flies each year which would not be on transatlantic flights?

A. I have not done that calculation.

Q. You have not done it either for passenger miles or for plane miles?

A. I did it for passenger miles.

Q. But you discarded it?

A. And discarded it.

If it is material, I will be pleased to redo it.

Q. You did not do it, however, for plane miles?

A. That is correct.

Q. Taking the figures I gave you for average length of flight, Mr. Wemple, those figures show a substantial decline in 1961 and 1962, a decline of an average of 230 miles from 1960 to 1961, of 370 miles from 1961 to 1962, and an increase in 1963, but 1963 is still 209 miles lower than 1961 and 439 miles lower than [Tr. 5501] 1960.

Wemple—Cross

What is the explanation, if any, for this decline in the number of miles flown per flight?

A. It is miles flown per transatlantic flight. The figures which go into this ratio are two completely different series. One is the transatlantic flights which are set forth at the top of page 21, and they generally decreased slightly from 1959 through 1961, and in 1962 and 1963 they increased very substantially for 1963.

Q. What table did you refer to?

A. The top of page 21. I happen to be looking at it, TWA's transatlantic flights.

Q. Are you talking about how the number of flights increased?

A. The number of flights, which is one element of the calculation that you have given here.

Q. I have considered that element in the question I gave you as to page 18, the bottom table.

A. In order to comment on how these miles per flight figures vary I have to look at the elements that go into the calculation.

Q. I gave you the elements. I took the elements you gave us, the number of transatlantic flights and the number of plane miles.

[Tr. 5502] I divided the flights into the plane miles—those are the only elements I am talking about—and I get an average number of miles per transatlantic flight.

I gave you the calculation. I pointed out the decreases, particularly as against 1960.

I am asking you what explanation you have for this decrease in average number of miles per transatlantic flight.

Mr. Williams: Is that what you are trying to explain?

Wemple—Cross

The Witness: Yes, sir.

Mr. Williams: Go ahead and explain it then.

A. To return to the series at the top of page 21 which is TWA's number of transatlantic flights—

Q. The same figures which appear, do they not, at the bottom of page 18, at least for the years shown at the bottom of page 18?

A. That is correct.

Mr. Williams: Let him finish without interruption, please.

Q. Proceed.

Mr. Williams: Do you know where you are?

A. This is the denominator for this particular [Tr. 5503] calculation.

And as is very evident from that table, the denominator has not been constant. It varied from a low in 1961 to a high in 1963. And, of course, the 1963 high is substantially above the others.

Now, the explanation of how TWA came to operate those particular numbers of transatlantic flights is, of course, a very complex matter. It relates to TWA's available aircraft, it relates to the competition it faced, and to its plans and its policies respecting transatlantic flights.

And it is just a tremendous mass that is not subject to my answering to you without going into the—all I can answer is that this is how TWA chose to operate its International Division, and I cannot give you the reasons as to why it made the millions of decisions that went into those particular results.

Now, the International Division plane miles for TWA for the years 1959 through 1963 are set forth in the left hand

Wemple—Cross

column of the table at the top of page 19, and this series, too, has a variation in—throughout the period, and 1963 is of course the highest figure.

Again, as to how TWA happened to operate those particular plane miles, this is simply—this is the way [Tr. 5504] TWA chose to operate during those years.

And the figures you have given me are a ratio. I see no easy way to offer a simple explanation of how those particular miles per flight happen to vary in that fashion. Obviously the ratio was considerably different in 1959 during the piston period than it was in the years that follow.

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[Tr. 5514] * * * Q. As I understand the testimony you have given previously, you did not base your additional flights for the other years, your estimates for additional flights for the other years which appear in the table on the top of page 19 on any assumptions or any study as to where and when such flights would have been scheduled by TWA?

A. That is correct.

Q. You did not go into that?

A. That is—as I mentioned before, we did go into that at an earlier stage and discarded it as an impractical system to use for these estimates.

Q. Did you find it impractical because of the difficulty of getting all those additional flights scheduled?

A. No, sir.

Q. Did you make any effort to schedule those additional flights that you show at the top of page 19?

[Tr. 5515] A. That was the objective of that particular exercise and analysis.

Q. Did you finish your analysis in that regard?

A. No.

Wemple—Cross

Q. Did you run into difficulties of any kind as to where those flights would be scheduled?

A. Not as to where those flights would be scheduled, no.

Q. Where then did you plan to schedule them?

A. I do not remember, except that we generally used the policy that they would be scheduled to places and at times that TWA eventually did schedule them when TWA had more jet aircraft.

Q. In making that study, did you compare TWA's flights with, for example, Pan American's flights where they were on competitive routes?

A. At that time we had available to us, and as I remember, used for occasional comparison what other airlines were doing.

• • • • •

[Tr. 5527] • • • Q. Did you make any study in connection with your calculations in the preparation of this report of the [Tr. 5528] routes that were operated by the foreign flag carriers during the period 1958 to 1963 and of the equipment they had with which to operate such routes?

A. A very casual study of the numbers of jet aircraft which the various foreign flag carriers had—

Q. Would you begin that again?

A. A very casual study of the numbers of jet aircraft the foreign air carriers had in their fleets. Perhaps a more descriptive term would be a very abbreviated study of that. And we also reviewed some information on the cities served by foreign flag carriers flying between the United States and various European cities.

• • • • •

[Tr. 5535] • • • Q. Whereas the transatlantic flight is supposed to be scheduled and extra sections?

A. And extra sections.

Wemple—Cross

Q. They do not include nonscheduled flights?

A. Well, extra sections I would not call scheduled flights but the—your statement is exactly correct, the transatlantic flights include both scheduled flights and extra sections, and the plane miles includes all plane miles.

Q. For example, the plane miles includes charter miles and the transatlantic flights do not?

A. That is correct.

Q. Yet you divide one into the other to get this ratio you call uniform?

A. That is correct.

Q. Just before we recessed at noontime, I had asked you what study you had made as to the routes flown and the equipment used by foreign flag carriers, and my question, I believe, was related to the statistics of foreign flag carriers on the top of page 21.

You stated generally, if I recall rightly, that you made some examination of timetables and so on.

A. That is correct.

[Tr. 5536] Q. Did you make any real study of the actual number of flights being offered by these foreign carriers and on what routes they were?

A. I did not make a detailed, extensive study.

Q. Do the results of any examination you made appear anywhere in your report?

A. They do not.

Q. Do the data that you developed still exist?

A. Well, the basic data that we used are available in the Official Airline Guides.

The results of our abbreviated analysis have been discarded long since.

Q. They no longer exist?

A. That is correct.

Wemple—Cross

Q. Would the same be true with respect to any study of equipment which the foreign carriers had?

A. I made no detailed study of equipment foreign carriers used in the preparation of this report.

Q. At page 21 you state in the text in the middle of the page that IATA statistics are not available for charter flights for 1958—I don't know whether that means up to 1962 or through 1962.

A. I believe it is intended to mean through 1962.

Q. Do you have before you Defendants' Exhibit 214?

[Tr. 5537] A. Which is?

Q. Your February 16, 1962 report.

A. I do.

Q. I direct your attention, if I may, to Exhibit A attached to that report.

A. I have it.

Q. The table on the right-hand side of that page covering the years 1959 through 1961 preliminary, and the heading "Transatlantic Passengers" over the first three columns to the right of the years—do you see it?

A. Yes, I do.

Q. I direct your attention to a footnote marked by an asterisk which reads:

"Includes nonmilitary charter traffic of IATA carriers as well as military MATS on-scheduled flights, but excludes carriage by nonscheduled airlines as well as miscellaneous carrying on cargo vessels and military transports."

A. Yes.

Q. Are those IATA figures?

A. Yes, but I call your attention to the fact that these travel between Europe and U.S.A. and Canada, whereas the figures we have used in our other report are limited to travel between Europe and U.S.A.

Wemple—Cross

[Tr. 5538] Q. By the other report, you mean the report that you submitted in this proceeding?

A. Dated May 2, 1966.

Q. It concludes no Canadian traffic?

A. That is correct.

Q. So charter traffic data was available, at any rate, from IATA?

A. Yes.

Q. What did you mean when, they say that the IATA statistics are not available for charter flights, when you used them in Defendants' Exhibit 214?

A. I have forgotten the exact details, but for the purposes of this particular report, which is dated May 2, 1966, it was our conclusion that the charter traffic statistics that might have been available, were not appropriate to be included in these—in this particular tabulation and particular analysis.

Q. Did you—

A. I expect that one of the factors was that as noted on Exhibit A that the traffic on nonscheduled airlines was excluded and nonscheduled airlines carry a considerable amount of this North Atlantic charter traffic.

Q. Are nonscheduled airlines members of IATA?

[Tr. 5539] A. Some are.

Q. Did not the IATA statistics which were available show the number of flights, the origin and destination and the number of passengers?

A. I do not remember.

Q. Did you examine to determine whether or not such statistics were available to you?

A. We examined in general available IATA statistics.

Q. Are you testifying in substance that IATA's charter statistics were not available?

A. I am testifying that we elected to not use separate charter flights and passenger statistics for this particular analysis.

Wemple—Cross

It is my recollection that one of the factors in arriving at that decision was the matter of availability of figures that we would consider meaningful for this particular analysis.

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 232, as a sample, a six-page document headed "International Air Transport Association Compiled by New York Branch Office, December 1959," three pages called "Eastbound," three pages called "Westbound."

[Tr. 5540] * * * Mr. Hayes: So as not to clutter the record, I will state, and counsel can correct me if it is incorrect, this which I have marked as a sample was a set of monthly statistics put out by IATA during the period mentioned by Mr. Wemple, 1958 to 1962.

By Mr. Hayes:

Q. I show you, Mr. Wemple, Defendants' Exhibit 232 for identification. Do you recognize it as a regular report made by IATA to its members?

A. I believe I have seen it before.

* * *

[Tr. 5541] * * * Q. Defendants' Exhibit 232 for identification shows, does it not, by airlines, charter flights for the month with number of flights and number of passengers, among other information?

A. There is some information labeled charters on here.

[Tr. 5542] Q. It gives the origin and destination which would permit the elimination of Canadian traffic, does it not?

A. I call your attention to the third line under "British Overseas Airways Corporation," 16 flights, Chicago—

Wemple—Cross

Detroit—Montreal—London, revenue passengers 139 first, 129 tourist, 631 economy for a total of 899.

I have no idea how to determine those which were the U. S. to Europe passengers and those which were Canada to Europe passengers.

Q. Those are the scheduled flights, are they not? The charters I think you will find below them.

A. Oh, I misunderstood your point.

I—well, do you want me to examine all of the references to charter here in order to answer your question?

Q. You may do it any way you please.

I am asking you whether or not charter statistics were not, in fact, available for—

The Special Master: I think the question was whether or not you could separate out the Canadian passengers.

Mr. Hayes: And he could separate out the Canadian, that's right.

[Tr. 5543] The Witness: On the charter statistics that are here?

Mr. Hayes: That is right.

The Witness: I am not sure of the significance of that symbol on the westbound flights under "Charters" which is apparently for BOAC. It says "LAJES-Boston."

I don't know what that LAGES means.

Q. Are not those designations of airports?

A. I just don't happen to recognize them and I don't know whether one is Canada or one is U. S. or something else. The Boston is clearly—

Q. That information could be readily obtained, could it not?

A. Oh, as to what the symbols mean, absolutely.

Wemple—Cross

In looking at these figures quickly, with the exception of the one I just mentioned, I see none that could not be classified as either U. S. or Canadian termini for a charter flight.

Q. As a matter of fact the Canadian designations are preceded by a "Y" in each instance, are they not?

A. A number of the Canadian terminals are identified by a "Y".

Q. Do you know that that was the routine that IATA [Tr. 5544] used to designate Canadian?

A. I did not know that there are none without a "Y" on them.

Q. The table on page 23 of your report, Mr. Wemple, you set forth the number of seats available, transatlantic seats for the years 1958 through 1963 by TWA, Pan American, foreign carriers, total IATA and TWA percentage, and then on the top of page 26 you calculate a revised TWA percentage which you arrive at by stating first the total IATA seats, and I am thinking now of 1958 and—

A. Excuse me. The top of what page?

Q. 26.

Mr. Williams: 26.

A. Thank you.

Q. For the years 1959 and 1960, you take the total IATA seats, you take TWA's actual seats, which you got from page 23, you add your estimated increases, you come to a revised total of TWA seats, you restate the IATA seats as revised, and they do not change for 1959 and 1960, and then you get a revised percentage of IATA for TWA.

A. That is correct.

Q. In the years 1961 to 1962, before calculating [Tr. 545] the TWA percentage, you revise the total of IATA seats—

A. That is correct.

Wemple—Cross

Q. —by adding to the actual IATA seats the number of additional seats you estimate TWA would have available?

A. That is correct.

Q. Then you calculate a percentage which you call TWA's revised percentage, which is the percentage arrived at by dividing your revised TWA seats by your revised IATA total?

A. That is correct.

Q. You followed the same procedure, did you not, in Chapter III?

A. That is correct.

Q. On page 26 your revised percentage for TWA of 12.5% becomes 13.4 when Chapter III is added in, and your revised percentage for 1960 of 19.7 on page 26 becomes 20.8 when Chapter III is added in, is that correct?

A. What page is that on, Chapter III?

Q. 48, I believe. The top of page 48, 20.8.

A. That is correct.

Q. For 1959 and 1960, you are assuming that the total of IATA seats would not change, and that the totals of other foreign carriers would not change?

[[Tr. 5546] A. That is correct.

Q. But you are assuming a transfer of the additional TWA seats from Pan American?

A. That is correct.

Q. For the years 1961 through 1963, you are assuming that the total of IATA seats would be increased by your estimated increase in TWA seats—

A. That is correct.

Q. —but that the total seats made available by all other carriers, foreign and Pan American, would remain unchanged?

A. That is correct.

Wemple—Cross

Q. Except for the shift from Pan American to TWA which you indulge for the years 1959 and 1960, you, in effect, are assuming, are you not, that the available seats offered by all other carriers remain unchanged throughout the period?

A. I selected that method of calculation—

Q. Just answer the question first, please.

A. Yes.

Q. Only TWA would have changed under our approach?

Mr. Williams: He said so.

Mr. Hayes: I think you are right, Mr. Williams. I guess he did.

[Tr. 5547] Q. In your text at page 25, you mention the assumption that the additional seats offered by TWA would have been a transfer from Pan American because TWA's aircraft would have been a transfer from Pan American was supplied to you by counsel?

A. Yes.

Q. Who also advised you that Pan American could have obtained replacements in the spring of 1961?

A. Yes.

Q. Then you go on, for the remaining years you selected the premise that the annual total number of transatlantic seats available would have been increased by the number of additional TWA seats.

What other premises did you consider before you made that selection?

A. I considered reducing the total number of IATA seats for other carriers by the amount that TWA's seats would have been increased. That is essentially the only other system I considered.

Q. Did you make any calculations based on that premise?

A. I don't believe I did.

Wemple—Cross

Q. What did you do by way of considering it? What does that mean, you consider it?

[Tr. 5548] A. We are working here with a percentage, TWA's percentage of the IATA total. That percentage is the result of arithmetic with a numerator and denominator, the numerator being TWA's seats.

With the additional aircraft we have TWA's number of seats being increased. If we allow that increase in the fraction we would get a certain higher percentage.

If we at the same time reduced the denominator which would be in effect selecting the assumption that IATA seats would have been reduced by the number that TWA increased, the percentage would go still higher.

I elected to use the intermediate course whereby TWA's seats are increased but the IATA total is presumed to have not changed.

Q. Is that what you mean by considered?

A. That is correct.

Q. When you made the selection of which premise to use in 1961, 1962 and 1963, did you base it at all on a study of the equipment the foreign air carriers had available in those years?

A. No.

Q. Or on the routes the foreign carriers were flying in those years?

[Tr. 5549] A. No such study.

Q. Or on the number of passengers they were carrying by routes in those years?

A. No such study.

Q. The same would be true of Pan American, you made such study in those years?

A. In making that selection of this particular form to use for analysis, that is correct.

Wemple—Cross

Q. Let us look again at the table at the top of page 19 where for the year 1961 you show 987 additional flights.

Dividing that number by 52, one arrives at 19 one way flights or $9\frac{1}{2}$ round trip flights.

As a practical matter, is it not a fact that since you are using a yearly average here, if those 19 additional flights would be scheduled there would be more in the summer during the peak season and less in the off-peak season?

A. I am using a yearly total, not a yearly average.

Q. I know that. I know what you are doing.

A. Now, could you please ask me your question on that basis?

Q. I am asking you whether if you or TWA were faced [Tr. 5550] with the task of putting on an average of 19 flights per week, it would actually schedule more per week during the peak season and less per week during the non-peak season.

A. I can't imagine TWA being faced with the proposition to put on an average of 19 additional flights per week for a one year period. So, therefore, I cannot answer your question.

Q. You supplied the figure of 987 added flights.

A. For a year, that is correct.

Q. Right. That comes out as I say to an average of 19 per week.

Mr. Williams: If you do it that way.

Mr. Hayes: Just be patient, please, Mr. Williams.

Mr. Williams: I am trying to understand what you want the witness to say.

Mr. Hayes: I asked this question, assume, as he does here, that TWA had these additional flights to schedule.

Wemple—Cross

Q. Assume that. You made this assumption. You arrived at this calculation.

If TWA were scheduling 987 additional flights in the year 1961, would it schedule more of those flights [Tr. 5551] in the peak season and less in the off-peak season?

A. I would have to examine TWA's detailed flights pattern for the year 1961 to be able to answer that correctly, and I cannot do it extemporaneously.

Q. Didn't you make any study, I thought you did, of their flight pattern, their existing flight pattern.

A. I reviewed it.

Q. As a matter of fact around the same time or just shortly before, you were engaged to prepare this report, you had made quite a review in connection with Defendants' Exhibit 214, I think it is, of—

The Special Master: Here you are not asking for a review of management decision, though, Mr. Hayes.

Mr. Hayes: I know I am not.

The Special Master: You are asking him to make a management decision, it seems to me, and I don't think—

Mr. Williams: I object to the line of questions. I don't think it is productive of anything and is relevant here.

The Special Master: I will sustain the objection.

[Tr. 5552] Mr. Hayes: Mr. Brownell, if I may for a moment—

The Special Master: You may state your position.

Mr. Hayes: —we are faced here with a fantastic figure which is used as a basis for calculating damages of 987 flights in the course of a year.

Wemple—Cross

The Special Master: Would it have made any difference on damages whether more of them had come in the summer season and less in the winter season?

Mr. Hayes: I think it would, because the summer season would have the higher load factors and the off-peak season would have the lower load factors.

The Special Master: You are entitled to point that out, but I don't see how the witness can tell you how he would have scheduled them. He is not an expert on scheduling.

So far his only comments in that area have been to review management decisions.

Mr. Hayes: So far as determining the realistic or lack of realism in this figure—would seem to me that this witness who comes up with [Tr. 5553] this additional number of flights and I think it is obvious that if the flights were being flown they would have been flown more in the peak season than in the non-peak season—

The Special Master: So do I.

Mr. Hayes: —how many actual flights he would be putting on TWA during that peak season, supposed flights rather than actual, and how much traffic there would be because he is talking about a static market here to fill the seats on those additional flights—he is not talking about a growing market—

The Special Master: Are the monthly figures there for the actual?

Mr. Hayes: I am sorry.

The Special Master: Are the monthly figures for the actual in his report?

The Witness: No, sir.

Mr. Hayes: No. But the IATA statistics are

Wemple—Cross

monthly which he uses as a base here to get into this table 19. They are monthly figures.

The Special Master: You can certainly question him about them but I won't allow any further questions which would require him to make [Tr. 5554] a statement as to how he would have scheduled them hypothetically.

Q. As I understand it—I think I have asked that question—I won't repeat it—you had the IATA monthly statistics available to you, did you not?

A. Yes.

Q. You knew from the IATA statistics or you would determine how many flights were flown by each of the IATA members during each month?

A. That is correct.

Q. And how many passengers were carried by them?

A. That is correct.

Q. You could determine roughly at least the load factors at which they operated for each month?

A. I could have.

Q. You did none of that?

A. I did none of that.

Q. You are treating this figure of 987 additional flights on the same basis exactly as the actual flights that were flown, are you not—

A. That is correct.

Q. —for your damage calculation?

A. That is an annual figure and it is compared with an annual figure.

[Tr. 5555] Q. The same is true of your 1793 flights in 1962, is it not?

A. That is correct.

Q. And of the 311 in 1963?

A. That is correct.

Q. Take the peak of 1961, July 1961.

Wemple—Cross

Do you know how many schedules TWA actually flew to Europe?

A. No.

Q. According to the Official Airline Guide, and I am relying on it, for July 1962—

A. I thought you had just said July 1961, but—

Q. 1961. I am sorry.

A. —it is immaterial to my answer.

Q. The question had to do with flights in July 1961. The Airline Guide I mentioned was published in July 1962.

That should be 1961. I am sorry. It is a typo in my notes. It should be Airline Guide for July 1961 also.

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[Tr. 5557] [Mr. Hayes:] I ask that there be marked for identification as Defendants' Exhibit 233 a work paper of Mr. Wemple's from Folder 9B headed "Jets, All Gateways" and then in the center headed "TWA-Hughes, TWA International Division, Summary of All Eastbound Weekly Transatlantic Jet Flights and Jet Service to Gateway Cities and Beyond," consisting of two pages.

.

Q. Are you acquainted with Defendants' Exhibit 233 for identification?

A. I am.

Q. Can you tell me from Exhibit 233 for identification how many jet flights TWA flew to gateway cities on April 30, 1961, effective April 30, 1961?

A. This particular schedule lists 40.

Q. The same number on July 1st, effective July 1, 1961?

A. That is correct.

Q. And also on August 2, 1961?

A. That is correct.

Wemple—Cross

Q. That was to all gateways, if I recall rightly?

A. No, sir.

[Tr. 5558] I call your attention this is to the London, Paris and Iberian gateways alone.

Q. I am sorry. London—where do I find that?

A. At the top—first page.

Q. I see. London, Paris and Iberian gateways?

A. That is correct.

Q. Do you know how those flights were split by gateways?

A. I can read the numbers on this first page if that's the answer to your question.

Q. I don't know. You tell me if that is the answer, Mr. Wemple.

A. I am puzzled by your question. Please expand.

Q. How many of the weekly eastbound jet flights did TWA operate, say, in July 1961 to London, Paris and Iberian gateways?

A. 40.

Q. How many to each?

A. 16 to London, 19 to Paris and 5 to the Iberian Peninsula.

Q. These figures were obtained according to the footnote from the employees' timetables?

A. That is correct.

Q. You do not have Rome here. Have you any work [Tr. 5559] paper disclosing how many non-stop jet flights TWA had to Rome in July 1961?

A. The second sheet of this exhibit has a listing of weekly jet flights to Rome.

Q. Your first sheet is my second sheet and the other way around. I see. Now I am straight.

Wemple—Cross

This is really to all gateways, is it not, practically, and to other cities as well?

A. That's what the title says.

Q. That shows for August 1961, as I understand it, two to Shannon, fourteen to London, seven to Frankfurt—

A. You are just a little too fast for me. Okay, I am with you.

Q. Four to Lisbon, five to Madrid, sixteen to Paris, two to Geneva, two to Zurich, three to Milan, sixteen to Rome, two to Athens, and one each to Dhahran and Bombay. They both couldn't be non-stop, could they?

A. The others are not necessarily non-stop.

The Special Master: No, I doubt it.

Mr. Hayes: I was wondering.

Q. There is no question in your mind, is there, Mr. Wemple, as to the accuracy of the number of flights to have been operated by TWA as of any of the dates set forth in Defendants' Exhibit 233 for identification?

[Tr. 5560] A. I have no reason to question this exhibit.

Mr. Hayes: I offer it in evidence.

Mr. Williams: No objection.

The Special Master: Received.

(Defendants' Exhibit 233 for identification, received in evidence, as of this date.)

Q. In 1962, TWA increased its schedules to those same gateways and others, did it not, to a total of 46? I am speaking of the peak season.

A. Yes.

Q. In 1963, it made a further increase, did it not, to a total of 61?

A. Yes.

Wemple—Cross

Q. In connection with your methodology here of increasing TWA seats and leaving TWA's competitors unaffected except your transfer of seats from Pan American to TWA in 1959 and 1960, are you assuming that both the foreign carriers and Pan American would not have reacted to the additional competition offered them by the additional flights you set forth on the table on page 19?

A. I am not making that assumption.

Q. You are assuming their number of seats are remaining the same, are you not?

A. I selected that system for the calculation.

[Tr. 5561] Q. By assuming their number of seats remained the same, are you not assuming that they would not have put on additional capacity?

A. I make no assumption as to respect what they would have done in their flight operations. I simply selected the method for calculation that the total seats would have remained unchanged.

Q. Isn't there an unspoken assumption in table 19, Mr. Wemple, that they would not have increased in the available seats they were offering the public? Isn't that basic to it?

A. No, sir. I answered your question as to assumptions respecting the method of calculation, and I absolutely did not make an assumption respecting what the other airlines would have done in flight schedules, et cetera, if TWA had had these additional aircraft.

Q. On what basis then did you just use exactly the same number of figures for the flights and passengers—take the flights—for the flights that TWA's competitors, including Pan Am, would not have changed?

A. I believe I described why I made that particular selection in holding the denominator of the fraction which is used for the calculation of TWA's percentage constant, because on balance, it would give a slightly lower state-
[Tr. 5562] ment of results.

Wemple—Cross

Q. Are you saying in substance, Mr. Wemple, that by leaving the number of foreign flights unchanged, you are not operating on the premise that there would have been no competitive reaction by the foreign carriers?

A. I have no intention and I do not make that claim, statement or assumption.

Q. The question is, is that not inherent in your tabulation?

The Special Master: That has already been answered.

Mr. Williams: He said no.

Q. If, in fact, the foreign carriers or Pan American or both had offered more seats in more flights to meet this supposed increased competition from TWA, your percentages would change to the extent to which such added competition was put into the market, would they not?

A. That is correct.

[Tr. 5563] • • • Q. When, Mr. Wemple, did Pan American put into transatlantic service any one of the six jets which you transferred to it in your Chapter II? By "commercial service," I mean Pan American's revenue service.

A. I have dates here. If you like, I will just read them off as to when Pan American—

The Special Master: You just want the first one, don't you?

The Witness: The first one was October 26, 1958.

Now, whether that specifically went into transatlantic service at that particular time, I do not know.

By Mr. Hayes:

Q. What is the number of that plane?

A. N711.

Q. No, I am referring—

A. I see what you mean.

Wemple—Cross

Q. (Continuing)—to planes that you—

A. 701, 2, 3, 4, 5, and 6. One moment, please. I find a plane here, Plane 702 which was January 27 1960.

[Tr. 5564] Plane 701 was December 8, 1959.

Q. You might as well give me the rest.

A. This table does not go beyond that point. Those are the only two of those particular planes that happens to be on this table.

Q. The rest were at later dates, were they not?

A. I would presume so.

Q. So, in fact, Pan American put one of the six jets with which Chapter II is concerned into revenue service on December 8, 1959?

A. That is correct.

Q. Which would be 24 days for the year 1959?

A. That is correct.

Q. Or to speak for the month of December, it would be 8/10 of a plane for the month of December; is that right?

A. Yes.

Q. On Exhibit D, you transfer, as revised, 3/10 of a plane from Pan American to TWA in November 1959, and 1.6/10 of a plane in December 1959, do you not?

A. That is correct.

Q. How did you get those figures for November and December when Pan American's, the first of these six jets that went to Pan American did not go into service until [Tr. 5565] December 8, 1959, and couldn't generate any revenue?

A. The date I gave you before, which is what I understood your question related to, was the date the plane went into revenue service.

Q. That is right.

A. The numbers which you have just quoted me, the 3/10 and the 1.6 are aircraft available for commercial serv-

Wemple—Cross

ice calculated as I have described so many times for aircraft on hand after other aircraft of that particular fleet had been placed in operation.

Q. Until you transfer seats from Pan American, Pan American must first have the seats, must they not?

A. I call to your attention that the seats calculation is based on plane miles which, in turn, is based on ratios of average number of aircraft available for commercial service, which ratios are set forth on the top of page 14, and that in both the numerator and denominator of those particular ratios are in terms of planes available for commercial service, rather than planes available for revenue service.

Q. Would you mind answering the question, Mr. Wemple?

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[Tr. 5572] . . . Q. Let us take a transfer of seats, Mr. Wemple.

craft on hand after other aircraft of that particular fleet have been placed in operation.

Q. I understand that, but on page 25, you used the premise that the additional seats offered by TWA would . . . On what basis do you transfer the seats in plane N-701 from Pan American to TWA at a date prior to the time when Pan American actually used that plane in revenue service?

A. My answer is straightforward there cannot be any such transfer of seats.

Q. Will you explain that in the light of your language on page 25?

The Special Master: I don't want to interfere with this. I think I see what Mr. Hayes wants to get in the way of an answer.

Let me make this comment and then you can strike it from the record if anyone wants to.

Wemple—Cross

He has explained to my mind at some length and evidently to everyone's satisfaction at the time the basis on which his statistical study was made.

As I understand the purport of Mr. Hayes' present line of questioning, he is questioning whether or not it was a realistic basis on which to calculate damages in view of the fact that the [Tr. 5573] actual history is different from the statistical study in ways that you have previously explained.

I would think maybe it would help to get the two of you together here if a question such as this were asked: In view of the fact that the date of actual service of the first Pan American plane was different than the date when you start computing the damages in your statistical study, do you think that it was a realistic basis—that your statistical basis is a realistic basis on which to calculate the measure of damages?

As I say, if anybody objects to this statement of mine, I will be glad to strike it physically from the record.

Mr. Hayes: I have no objection.

Mr. Williams: I think you stated it exactly and I would like to have the answer or explanation.

The Witness: I believe our system of analysis and calculation is solid, legitimate and proper, and the cornerstone is this chart on page 24 which shows TWA's remarkable correlation between percentage of seats offered and percentage of passengers obtained.

[Tr. 5574] If I were rewriting page 25 today, I would delete or modify that reference to transfer of seats.

Wemple—Cross

The Special Master: That appears to be connected with actual history, I think is the trouble with that.

Mr. Hayes: That's right. I am concerned with the history.

The Special Master: You are saying now that you did not intend—

The Witness: Our system of calculation is not actually based on the transfer of seats, that is correct.

There were, of course, in the year 1960, a substantial number of seats transferred from Pan American to TWA, but the fragment of 1959 that is under discussion now does not have the indicated transfer of seats that is implied—does not have the transfer of seats that is implied by the last part of the statement on page 25. Or I should say by the statement in the last part of page 25.

Q. Are you telling us in substance by your last answer that in making your damage calculations you have not considered the historical facts based upon when Pan [Tr. 5575] American actually put the six planes with which you are concerned into revenue service on the Atlantic?

A. That is correct.

Q. You did not consider it important to look into this history of the actual useage of those planes by Pan American?

A. Yes, I considered the history of—no, let me withdraw that.

I did not consider it important as to where Pan American used those particular six planes, since Pan American had a substantial fleet of that type of aircraft.

Q. I am talking about transatlantic service.

A. So am I.

Q. I will try it again.

Wemple—Cross

In making your damage calculation for the International Division of TWA insofar as the six aircraft that went to Pan American were concerned, and in making your transfer of seats which forms part of the basis for your damage calculations, did you disregard the dates when Pan American actually put those six planes into service, revenue service?

A. I don't know whether disregard is the right word. We did not consider it. We did not intention- [Tr. 5576] ally disregard it. We just did not consider it.

Q. I don't want to quibble in semantics, Mr. Wemple, about the meaning of the word disregard.

Did you in your calculations as to the number of seats to be transferred, consider the dates when the six planes that went to Pan American were actually put into revenue service?

The Special Master: Would it express your view more clearly to say "utilize" rather than "consider"? Did you utilize it in your formula?

Mr. Hayes: Maybe it would. You know what I am trying to get here and I can't get it.

The Special Master: I think that would be more understandable.

The Witness: There is another aspect of your question which relates to calculation of seats that were transferred. We did not calculate the number of seats that were transferred.

We did consider that if Pan American had not had these six B-707 long range intercontinental aircraft, Pan American's seats offered on transatlantic would have been reduced until it could have gotten replacements for those aircraft.

We did not make a quantitative determination of exactly how much they could have been reduced.

Wemple—Cross

Mr. Hayes: Let me try it this way: I am afraid that did not help, Mr. Brownell. And no fault of yours, I will add.

Q. All of Chapter II leads up to a calculation of additional seats—I am speaking particularly of 1959 and 1960 now I should say—Chapter II leads up to a calculation of the number of additional seats TWA would have had if it had six particular Boeings, does it not?

A. That is correct.

Q. Then you proceed to put passengers in those seats?

A. That is correct.

Q. You also transferred the additional seats from Pan American, did you not?

A. No, sir, we did not make a specific transfer of additional seats from Pan American.

Q. I don't understand page 25 then.

That the additional seats offered by TWA would have been in effect a transfer of seats from Pan American because the aircraft would have been transferred from Pan American.

What does that mean if it does not mean what I [Tr. 5578] said?

A. As I mentioned before, if I were rewriting that page today I would rewrite it differently.

Q. However you would rewrite it, what does that mean?

A. It means that in my opinion Pan American would have offered fewer transatlantic seats during 1960 than it did actually offer, and, in effect, Pan American seats would have been reduced, TWA's would have been increased, and this would have effectively been a transfer of seats.

I do not represent that the number of seats that Pan American would not have offered would have been exactly the number of additional seats that TWA would have offered.

Wemple—Cross

[Tr. 5579] Q. So that we are clear, the additional seats you are talking about are the additional seats that TWA could get from the six planes, are they not?

A. Which were assigned to International Division service, that is correct.

Q. So we are back to those six planes?

A. A portion of those six planes.

Q. Basically the six planes and then you make an allocation to International. Let us start with six planes.

A. That is correct.

Mr. Williams: So counsel wants to know why you didn't pick the same dates for going in service for TWA.

Mr. Hayes: That is not what I asked.

Mr. Williams: No? I am sorry. I withdraw it.

Mr. Tenney: We had some history last week.

Mr. Williams: I missed the history. As a matter of fact, I missed the point if that isn't it.

Q. I am trying to learn from you—Mr. Wemple, and maybe it is my fault—I don't know—maybe my questions are unclear—

Mr. Williams: Don't philosophize. Just ask a question. We are trying.

[Tr. 5580] Mr. Hayes: I am trying harder than I thought I would have to, Mr. Williams.

Q. So far as the seats in those six planes are concerned for the years 1959 and 1960, have you not transferred to TWA the additional seats that TWA would have had if TWA had received those planes?

A. That is correct.

Mr. Williams: All right, he answered it. I think it is repetitive.

Wemple—Cross

Q. Are you not taking those seats away from Pan American? Everything else remains unchanged, remember, during those years.

A. I am taking those seats away from the—no, wait a minute. I withdraw that statement.

By the calculation at the top of page 26, I have taken those seats away from the total of Pan American and the foreign flag carriers, and I was thinking of taking them away primarily from Pan American. I should say—let me correct that last part—I was primarily taking those seats away from Pan American.

So the answer to your question is probably yes.

Q. Since those are the seats we are talking about, I want to know what basis there was for making a transfer from Pan American to TWA of those seats in those planes [Tr. 5581] prior to the time Pan American actually used those planes in revenue service.

A. And I cannot justify that.

Q. You cannot justify what?

A. What you had just said.

Q. I did not ask you to justify anything I said.

* * * * *

Q. Let me put it to you this way, Mr. Wemple: On Exhibit D you show for the year 1959—and I am taking [Tr. 5582] 1959 because of its simplicity—an addition to TWA of 2/10 of a plane.

If you had taken the date when Pan American actually put Plane 701 into revenue service, you would have, according to my calculation, only 6/100 of a plane in 1959.

Does that suggest anything to you?

A. In consideration of this line of discussion, if one is to ignore completely any transfer of seats from Pan Ameri-

Wemple—Cross

can to TWA in the year 1959, or to eliminate any such possibility—let me change that from the word “ignore”—the table at the top of page 26, the third from the right column labeled “IATA Seats Revised” should be not 1823, but 1824, which represents TWA’s increase, and that obviously would have no material effect on the percentages that are shown there.

I believe that is pertinent to the—I think that is the pertinent bit of information in answer to your question.

Q. I hope somebody else can make some sense out of that answer. I frankly can’t. It has nothing to do with the question I addressed to you about Exhibit D as to whether or not you had any comment on the fact that under your Exhibit D you have 2/10 of a plane there whereas if [Tr. 5583] you took the date that Plane No. N701 actually went into service with Pan American you would get only 6/100 of a plane?

A. And that would not be as we have identified Exhibit D, average number of aircraft available for commercial service.

That would be some different figure called aircraft in revenue service.

Q. I guess I will give up.

Let me try it another way.

On page 20 of your report, you add 1100 seats in 1959?

A. That’s correct.

Q. That’s as a result of some mathematical calculations of yours?

A. That is correct.

Q. Are you telling us that those 1100 seats came from Pan American?

Wemple—Cross

A. No, I am telling you that those 1100 seats came from TWA's operation of some of the six additional jet aircraft which are listed on page 10.

Q. It could come from only one of them, couldn't it, so far as Pan American's operation was concerned?

A. I'm not treating with Pan American's operation. [Tr. 5584] I am treating with TWA's operation of those aircraft.

Q. I am trying to find out about this transfer.

A. I am trying to explain about this transfer.

Q. Have you anything else to add?

A. No, sir.

Q. Thank you.

If I asked you the same questions with respect to the other six planes—

Mr. Williams: The other five.

Mr. Hayes: Thank you, Mr. Williams.

Q. —the other five planes of the six that you have assumed would have been delivered to TWA as I did with respect to the first of them concerning a consideration by you or to adopt your word a utilization by you of the dates when they actually were operated by Pan American in revenue service, would your answers be the same?

A. That is correct.

* * * * *

[Tr. 5593] * * * Q. The part of the report which deals with the transfer of seats, as specifically stated on page 25, and you gave testimony on it on Friday last.

A. Yes.

Q. In connection with this transfer of seats from Pan American or TWA, were you in effect assuming that Pan

Wemple—Cross

Am allocated the six 331s which it received to its Atlantic Division in precisely the amount you estimated that TWA would have allocated them to its International Division?

A. No, sir.

Q. In the absence of such an assumption, how do you arrive at a transfer of the seats to the International Division from Pan Am's Atlantic Division which were accounted for by the six planes?

A. Pan Am would have been short six B-331 aircraft during the 1959-60 period that we are discussing. The shortage would have been a fractional shortage of the six during the last part of 1959, and corresponding shortages for various months in 1960.

Pan Am operated its B-331 aircraft primarily on transatlantic service, and we believe it is completely [Tr. 5594] reasonable to assume that they would have been able to provide fewer jet transatlantic seats during that period if they had not had the six B-331 aircraft that we are discussing.

As to whether this difference in Pan American's jet transatlantic flights would have been precisely what we assume TWA would have operated, is not the point.

The point is that there would have been a reduction, a general reduction in Pan Am seats and a general increase in TWA seats.

One can make several assumptions. That Pan Am's reduction would have been smaller than TWA's; that Pan Am's reduction would have been greater than TWA's additional.

I chose the middle ground as being most reasonable for this particular calculation.

To illustrate with reference, for example, to December of 1959, our calculation, as set forth on the top of page 20, and further after in our report to the revenue estimate

Wemple—Cross

which is at the top of page 32 for the year 1959, as an element, a reduction of Pan Am's seats by 1100—that is set forth at the top of page 20—and a TWA increase in seats of 1100. If Pan Am, for instance, [Tr. 5595] had put—correction—Pan Am put one of its B-331 aircraft into revenue service on December 8, 1959. There would have been 24 operating days to the end of the month with that aircraft, and that aircraft carries something over 100 seats—let me use just 120 for round figures—let me use 110 for round figures. 1100 seats at 110 seats per aircraft would be 10 transatlantic flights or five transatlantic round trips within 24 days.

I offer that calculation to illustrate the type of changing seats that might have taken place.

Q. Could I have that arithmetic at the end again? I didn't quite get it.

The Special Master: Yes.

Do you want to read it back?

(The record was read.)

By Mr. Hayes:

Q. By this illustration, you are not testifying, are you, that Pan Am used that particular 331 in the Atlantic Division, for any particular number of flights between December 8th and December 31st, are you?

A. That is correct.

Q. You have made no inquiry as to where Pan Am used that particular 331, have you?

A. That is correct.

[Tr. 5596] Q. So you do not know whether it was in the Atlantic Division or one of its other divisions?

A. That is correct.

Wemple—Cross

By Mr. Hayes:

Q. If you are saying that seats are being transferred from other Pan American planes rather than from Plane N701, which you identify on page 10, what factual [Tr. 5599] basis have you for that transfer?

A. To repeat, the majority of Pan American's use of the B331 aircraft in the 1959-60 period was on transatlantic service.

I believe that if Pan American had had six fewer B331 aircraft, it would have been obliged to have offered fewer B-331 aircraft seats on transatlantic service, and I chose for this particular calculation what I believe is the most reasonable assumption, and that is, that the additional seats that we have calculated for TWA's international transatlantic operation would have been approximately the same amount by which Pan American's transatlantic operation would have been reduced.

Q. Have you made any study or inquiry as to how Pan American, in fact, deployed the six 331s which you have identified on page 10 of your report?

A. No inquiry.

Q. None at all?

That is correct.

Q. You are not able to testify that any portions of any one of those six planes was, in fact, used in the Atlantic Division of Pan American?

A. I am not able to testify as to specific use of [Tr. 5600] any of those specific planes.

Q. Did you, for example, examine or consider or study whether it went into your report or not, any data which Pan American reported to the CAB with respect to the use of this fleet in the years covered by your report?

A. I did.

Wemple—Cross

Q. Did you specifically make any study of what jets it used in the Atlantic Division?

A. I did.

Q. What did you find for the year 1959, for example, as to what jets were used by Pan American in the Atlantic Division?

The Special Master: Would someone explain to me what bearing on our objective here it would have to know what the historical use of those six planes was by the time Pan American—

Mr. Williams: Especially, your Honor, in view of the fact that the witness said—

The Special Master: He did not use them in his calculation.

Mr. Williams: He did not use them, no.

Mr. Hayes: My point is a very simple one. We are talking about six particular identified planes. [Tr. 5601] If they were not used in the Atlantic Division, they could hardly have had their seats transferred to TWA.

The Special Master: The transfer is a mathematical or theoretical one. There is no assumption at any time that a physical transfer of those planes to TWA enters into this calculation. The witness has testified that he believes his calculation is a reasonable one, based on general experience, but there is no—I am sure he is not going to say regardless, if we spend all day, that the historical experience by Pan American, the actual use of these six planes has any effect whatsoever on his calculation.

Mr. Hayes: Then I submit there is no factual basis for his calculation.

Wemple—Cross

The Special Master: That, I think you have made quite clear, and I would say to a point of exhaustion of the Special Master.

Mr. Hayes: I did not mean that.

The Special Master: So if there is some other line of inquiry, I believe it would be more useful to our objective.

By Mr. Hayes:

[Tr. 5602] Q. Let us get away into some other matters, then.

Does your transfer of seats involve some further assumptions? For example, implicit in your study, is there an assumption that the 331s that went to Pan American produced the same number of plane miles per year in the Atlantic Division that you estimate they would have produced for TWA in the International Division?

A. No such assumption.

Q. Is it implicit? I don't mean an express assumption. I asked is it implicit.

A. It's not implicit.

Q. Is it implicit in your calculations that Pan American, without those six jets, would have retained the same number of piston plane miles in its Atlantic Division over and above those that actually had been in it, as you estimate that TWA would have deleted?

A. I did not make a specific assumption on that matter.

Q. Are you, in effect, transferring to Pan American the piston planes that you are eliminating from TWA?

A. I am not.

Q. Or the piston plane miles that you are eliminating from TWA?

A. I am not.

Wemple—Cross

[Tr. 5603] Q. Is it implicit in your calculations that there would have been a net decrease in Pan American's Atlantic Division plane miles in the same amount as your estimated net increase of TWA International Division plane miles?

A. No such assumption.

Q. Is there implicit in your study that the ratio of the number of Pan American transatlantic flights to its Atlantic Division plane miles was the same as the ratio of TWA's transatlantic flights to its International Division plane miles?

The Witness: Please read that question.

Mr. Williams: Read the question.

(The question was read.)

A. No.

Q. Are you implicitly in your study concluding that there was a decrease in Pan American's transatlantic flights?

A. No.

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[Tr. 5608] . . . The Special Master: I think I understand this, if this will shortcut it a bit, that Pan American's history of flights and history of the actual number of seats flown by Pan American during this time would be immaterial—

The Witness: That is right.

The Special Master: (*continuing*)—to the calculations shown on page 47.

The Witness: That is correct.

Mr. Hayes: I suppose they could be, Mr. Brownell, What I would like to know is whether they are.

The Special Master: The witness said so, and you

Wemple—Cross

have pointed out that you think they are. I suppose that in the summing up, I will hear quite a bit about that, but we tested the witness on a number of approaches to that and he maintains consistently that they are in his opinion immaterial to it. So I just raised the question of whether we have not covered it, so far as this witness is concerned.

Mr. Hayes: I would like a statement from him as to why it is immaterial.

[Tr. 5609] The Special Master: I think you are entitled to that.

The Witness: With reference to page 47 in Chapter III, if TWA had received the eighteen B-331 aircraft on the earlier dates set forth on page 40, Pan American would not have had as much opportunity to fly transatlantic services with B-331 aircraft.

As I mentioned before, I believe this would have resulted in Pan American having offered fewer transatlantic seats in jet aircraft and probably fewer total transatlantic seats. So that it seemed to me proper and reasonable to make the assumption that the total number of IATA seats in these two years, 1959 and 1960, would not have been changed as a result of TWA's having received eighteen B-331 aircraft on the earlier dates.

That is my statement as to the reason I believed it was immaterial as to exactly what Pan American operated during those years.

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[Tr. 5616] . . . Q. Under Chapter III, Mr. Wemple, you added 17,000 [Tr. 5617] additional seats in 1959 and 27,000 additional seats in 1960. The question I would like to have answered is whether those seats to which I have

Wemple—Cross

just called your attention are also considered by you as a transfer from Pan American.

Special Master: That has been covered.

Mr. Hayes: I don't think it has, Mr. Brownell. I think I directed myself entirely to Chapter II up to now with respect to the transfer, not Chapter III.

The Special Master: I think it has been sufficiently covered.

Mr. Hayes: Could I have an answer? My recollection is that it has not been covered. He can either answer it yes or no. That is all I want to know.

Mr. Williams: I will object unless the witness has something additional to add to that testimony he has already given.

The Witness: Nothing additional.

Q. With respect to the planes which you assume to have been transferred from Pan American to TWA, are you making any assumption that Pan American in fact put those planes into service on the dates it received them?

[Tr. 5618] Mr. Williams: I object to that.

The Special Master: Sustained.

Q. On your table at the bottom of page 19, Mr. Wemple, you show as 130.51 number of seats per 331 aircraft for 1960. You do not show any figure for 1959.

What is the reason for the failure to show the figure for 1959?

A. No useful purpose would have been served because our calculation is based on a switch of jet aircraft for piston aircraft for a certain number of plane miles, and the seats per B-331 aircraft was not used anywhere in that calculation for 1959.

Additional seats calculated for 1959 are set forth at the top of page 20 based on the differences in TWA's average

Wemple—Cross

number of seats in the B-331 aircraft and the L-1649A aircraft for the year 1959.

Q. In making this additional seats per jet aircraft at the top of page 20, what number of seats did you use for the 331s?

A. I do not remember.

Q. Because I noticed there is quite a variation from 1959 to 1960 in the additional seats, 7.2 per aircraft. You have told us what number of seats you used for 1960 for the jets but you don't tell us what number [Tr. 5619] you use in 1959 for the jets.

A. I do not set it forth in the report because I believed no useful purpose would have been served.

Q. How did you arrive at the figure of 68.7 additional seats per jet aircraft for 1959 which appears at the top of page 20?

A. As set forth in Note B directly under that table, we reviewed TWA's statistics in Schedules 3-71M, and for the year 1959 calculated the average number of seats per aircraft offered in the B-331 operation and in the L-1649A operation and subtracted the two averages.

Q. That was an annual average, is that right?

A. That is correct.

Q. Did you make any inquiry as to variations in seating capacities during the period of operation?

A. We used monthly figures to calculate the annual average.

Q. Did you give effect to the monthly figures with respect to the months that you were determining that the increase in number of seats would take place?

A. No.

Q. Carrying through on your methodology, at the top of page 26—and check me if I am incorrect, please, [Tr.

Wemple—Cross

5620] Mr. Wemple—the thousand seat increase in TWA's seats brings about as revised by you, an increased percentage of TWA's share of total IATA, and then you use that percentage in relation to the historical to bring about a revised percentage of TWA's share of total IATA passengers, is that correct?

A. That is correct.

Q. Do you follow the same methodology in Chapter III?

A. That is correct.

Q. In Chapter II you show as revised—the table at the top of page 26—227,000 transatlantic seats that would have been offered under your assumptions by TWA, and to that figure is to be added, is it not, the 17,000 you show on page 47. So we get a total of 244,000?

A. That is correct.

Q. When you bring in the 17,000 from Chapter III, you increase TWA's share of IATA from an actual of 12.4% to 13.4%, is that correct?

A. No, sir. Chapter III is based on the change from the estimates of Chapter II, plus the actual. So that the percentages involved are 13.4 and 12.5 rather than 12.4.

Q. 12.5 is a revised percentage. The 12.4 is the [Tr. 5621] actual, is it not?

A. That is correct.

Q. That increase you calculate in Chapter III at page 47 produces according to your calculations a 7% increase in transatlantic passengers and 4.2 million additional revenue?

A. That is correct.

Q. You do not show anywhere, as I recall it, Mr. Wemple, under Chapter III, or anywhere else, how many flights would be required to produce 17,000 additional seats?

A. That is correct.

Wemple—Cross

Q. Have you made a calculation?

A. No.

Q. You did—

A. Correction on that. The calculation may be set forth in our Chapter IV on expenses. I would be pleased to report back as to whether or not I could find it in there.

Q. In Chapter II, you did tell us, at page 20, that—

A. Excuse me, Mr. Hayes. I said Chapter IV. I mis-spoke myself. Volume IV is what I meant to say.

Q. I would appreciate it if you would let me know.

[Tr. 5622] A. I will.

Q. In Chapter II, you do set forth for 1959 sixteen additional jet flights replacing pistons.

Could one obtain the number of additional flights that Chapter III covers by dividing the 17,000 additional seats by the number of additional seats per jet aircraft which you show at the top of page 20?

A. I would have done it differently. I would have taken the first line of the calculation at the top of page 17 and simply multiplied the number of flights by the ratio of jet plane miles.

Q. Wouldn't the way I suggested be an accurate way of doing it, since you are adding seats at a rate of 68.7 additional per jet aircraft?

A. It would come out with approximately the same answer.

Q. I have made the calculation, Mr. Wemple, and I come out to 247 additional jet flights in 1959.

You showed in page 41, you are assuming for Chapter III that B-331 service would start on August 19, 1959, which is 131 days of assumed operation during 1959, or an average of two additional flights per day which you assumed under Chapter III. Is that correct?

Wemple—Cross

A. I made no assumptions as to average number of [Tr. 5623] flights per day.

Q. Did you consider that, too, irrelevant to your report?

A. I did not consider it in making the calculation.

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[Tr. 5644] Mr. Hayes: My last question was on what facts, hard facts, he bases what he calls his ideas.

Mr. Williams: Have you anything to add to what you have already testified?

The Witness: I don't believe I have anything to add.

Q. At page 20, the table at the top, after doing some arithmetic you arrive at TWA flying 16 jet flights which are replacement flights.

Have you made any calculation to determine how many jet aircraft other than the six which have been assigned to Pan American with which you are dealing in this chapter Pan American would have had to place in the North Atlantic service or the transatlantic service in order to meet those 16 jet flights? To match them, I mean.

A. I have not made that specific calculation.

Q. Have you made any general calculation along those lines?

A. No.

Q. If I asked you the same question with respect to the additional flights that will be necessary to take care of the 7,000 seats in Chapter III, would your [Tr. 5645] answers be the same?

A. The 17,000 additional seats in Chapter III are calculated for TWA having eighteen B331 aircraft on a certain earlier delivery date set forth on page 40.

Wemple—Cross

Q. Yes. And my question is have you made any calculation to determine how many aircraft Pan American would have had out of its reservoir of jets other than the six to offer 17,000 more seats to match TWA's offering in 1959?

A. I have made no such calculation.

Q. If I asked you the same questions with respect to the 964 additional flights you show on page 20 for 1960, would your answer be the same?

A. If I understand that your question relates to calculations of how many aircraft Pan American would have required to make a duplicate increase in number of jet flights, I have made no such calculation.

Q. The same would be true of Chapter III for 1960?

A. Respecting the TWA additional seats and whether or not I have calculated what Pan American would have done to have offered that many more, I have not made such a calculation.

Q. Did you at any time make a study of the number of jets that Pan American used in its divisions other than [Tr. 5646] the Atlantic Division during the period covered by your study?

A. Yes, I reviewed Pan American's use of its different types of jet aircraft in divisions other than the Atlantic Division at one point.

Q. Are the results of that study in existence?

A. No, they have been discarded.

Q. No longer in existence?

A. That is correct.

Q. Do you recall what that study showed?

A. Yes. This was a study of Pan American operations by type of jet aircraft at various principal cities throughout the world.

Wemple—Cross

The Special Master: As to which you previously testified?

The Witness: That is correct.

Q. I asked you if you recalled the results of the study. What did it show?

A. I previously said that Pan American's use of those B331 type aircraft was on Atlantic Division service.

Q. Aside from that generality, you cannot give us the results of the study?

A. That is correct.

[[Tr. 5661] Q. Do you know what service Pan American scheduled eastbound, jet service, I mean, in 1960?

A. I cannot tell you that from memory.

Q. I am sorry?

A. I cannot tell you that from memory.

Q. Did you examine to determine how many eastbound schedules Pan American was offering as of the same dates that you have on Exhibit 233?

A. Not in connection with a calculation of this report.

Q. Whether you used it in connection with the calculation or not, did you examine the Pan American schedules to determine what schedules it was offering?

The Special Master: Other than that to which you have already testified.

The Witness: I think—not being sure exactly what I have testified, I have looked at Pan American schedules a number of times over the period 1957 to 1962. I rather expect I have looked at the Pan American schedule for the summer time 1960.

Q. Did you ever compare a columnar comparison?

A. Not in connection with the preparation of this report.

[[Tr. 5662] Q. No. At any time while you were working on this report, did you ever prepare a comparison?

Wemple—Cross

A. I do not recall having done so.

Q. You know the comparison that I have in mind of Pan American and TWA scheduled flights?

A. Similar to Exhibit—

Q. 233.

A. I presume.

Q. If Pan American had added jets to its Atlantic Division to compensate in whole or in part for the additional flights that can be determined from your report that TWA would have been offering in 1959 and 1960, there would necessarily have to be a change in your calculation to allow for the additional seats on those additional jets, would there not?

A. That is correct.

Q. The same would be true, would it not, to the extent to which foreign carriers offered additional service in the North Atlantic on jets?

A. That is correct.

Q. Any such increase of service under your approach would have increased IATA's total seats available and decreased TWA's percentage?

A. That is correct.

[Tr. 5663] Q. You made no such calculation?

A. That is correct.

Q. At pages 26 and 27 of your report, Mr. Wemple, you arrive at percentage increases, Chapter II, of the number of seats and in turn for the number of transatlantic passengers which you say TWA would have carried showing a per cent increase, and then you applied that amount on the top of page 27 to the International Division passenger revenues?

A. That is correct.

Wemple—Cross

Q. Is the effect of that treatment to increase the number of passengers by the same percentage that you increased the number of seats?

A. No.

Q. It is not? Maybe I misunderstood you then. I thought it was.

At any rate, whatever procedure you use in Chapter II is used also by you in Chapter III, is it not?

A. That is correct.

[Tr. 5676] • • • Q. This chart on page 24, it purports to set forth what happened over a period of years during which both the capacity and the market were growing?

A. That is correct.

I beg your pardon. TWA's capacity went down in 1959. Other than that, each year of this period TWA had a—I believe had a larger capacity than the previous year. That is correct.

Q. And Pan American's went down in 1959, too?

A. Yes.

Q. But generally speaking is not what I said true, that what the chart on page 24 purports to record is what happened during those years so far as TWA's percentage of certain totals were, and that during those years both the capacity, overall, and the market were growing?

A. That is a very correct generalization.

Q. The percentages which you apply in accordance with your statement on page 25 at least for 1959 and 1960 assumes no growth in the market; is that correct?

[Tr. 5677] A. We assumed no increase in the total number of passengers for any of the years, 1959 through 1960 or our calculations that follow.

Q. But in the years after 1960, you do revise the number of seats, do you not?

A. That is correct.

Wemple—Cross

Q. Your revision of number of seats and TWA's percentage carries through to your revision of TWA's percentage of passengers, does it not?

A. That is correct.

Q. Except for adding to IATA totals for the years 1961 through 1963 your estimates of increased TWA capacity, you are assuming what could be described, as a static market?

A. No, sir, as a static capacity.

Q. All right, static capacity.

A. That is correct.

Q. Your table on page 21 showing the increase of passengers does describe the market, does it not?

A. That is correct.

Q. There are substantial increases in each year of the number of people who traveled transatlantically, is that correct?

A. That is correct.

[Tr. 5678] Q. That increased number of passengers was to be shared among the various IATA carriers who were offering additional capacity; is that correct?

A. No, I make no assumption on that point.

Q. Isn't that common sense, Mr. Wemple, without an assumption, that the additional passengers would have to fly in the planes of some one of the IATA members?

A. That is correct.

Q. When you add seats to TWA, and you have passengers following those seats into TWA's revenue, aren't you assuming that TWA is capturing those passengers from its IATA competitors?

A. That is correct.

Q. But you made no determination as to how much it is getting from any competitor.

A. That is correct.

Wemple—Cross

[Tr. 5703] * * * Q. In 1959, Mr. Wemple, on the tables which appear there—at page 26 I should say—you increase TWA's seats by 1000 in the upper table?

A. That is correct.

Q. You increase TWA's passengers by 1000 in the lower table.

Does this indicate your opinion that all of the thousand additional seats would be filled?

[Tr. 5704] A. No.

Q. What does it indicate?

A. You will recall that the thousand increase in seats is a net increase, the result of larger jet aircraft replacing smaller piston aircraft.

TWA's number of jet seats is, of course, increased more than 1000. I have made no calculation to determine the loading of the additional jet seats that were offered.

Q. But it is a fact that you are adding 1000 seats in 1959 and you are adding 1000 passengers in 1959; is it not?

A. And we are changing roughly 1000 piston seats to jet seats as well.

Q. However you do it, that is what you are accomplishing, isn't it?

A. And the net result would be a 1000 increase in the number of passengers.

Q. So that for those 1000 seats we have 100 per cent load factor in effect?

A. The answer—that is not what the facts would have shown.

Q. I know it isn't, but it is what your estimate is, is it not?

[Tr. 5705] A. No, sir.

The load factor is determined by the number of seats that exist in an aircraft, divided into the number of passengers that are seated in that aircraft.

Wemple—Cross

Q. I took just these thousand additional seats and divided them into the thousand additional passengers and I got 100 per cent.

A. But there were more—

Q. I am talking about the addition, just the addition.

A. I cannot accept your load factor designation as applied to those additions.

Q. Project it then. That is your privilege. You are also concluded, are you not, in 1959, with those same 1000 passengers, that they would have been carried on sixteen flights that would have replaced 1649As?

A. Do you have a page reference for that?

Q. I believe it is page 20, if I remember rightly. Maybe I am wrong on the page.

A. That is correct.

Q. Yes.

A. Sixteen jet flights replacing sixteen piston flights.

Q. Sixteen into 1000 gives $62\frac{1}{2}$ additional passengers on the average?

[Tr. 5706] A. Yes.

Q. So your calculation is based on your determination that the sixteen additional flights would have an average of $62\frac{1}{2}$ additional passengers per flight?

A. That is correct.

Q. Aside from your calculations did you determine any facts upon which to base that conclusion?

The Special Master: Other than those to which you have already testified.

A. No further facts to report.

Q. All of those additional flights with the $62\frac{1}{2}$ additional passengers per flight that would have been carried would have occurred in late November and December of 1959, would they not?

A. That is correct.

Wemple—Cross

Q. That consideration does not cause you to change the number of additional passengers per flight?

A. It does not.

Q. If we turn to Chapter III for 1959 where you added 17,000 seats for a total of 18,000, you come up with—page 47, I believe—

A. Yes.

Q. —I think it is 11,500 additional passengers, if I can find it. Pardon me. 10,500 additional [Tr. 5707] passengers. 157,500 minus the 147,000 you have already estimated in Chapter II.

Do you see it, Mr. Wemple?

A. That is correct.

Q. All of those passengers would have been carried on jet flights which replace 1649As; is that correct?

A. That is correct.

Q. You do not have this figure in your report, as I recall it, but your total of added seats for Chapters I and II is 18,000 and when that is divided by, I think it is 68.7—yes—68.7 additional seats, we arrive at a total of 262 flights for the two chapters; is that correct?

A. Approximately.

Q. If we divide the total increase in passengers of 100 under Chapter II to the 10,500 in Chapter III, by the number of 262 to represent the flights, one arrives at practically 44 additional passengers, on an average, per flight? I think it is 43.9.

A. Yes.

Q. Those are all additional passengers now?

A. That is correct.

Q. All of those passengers, additional passengers, [Tr. 5708] would have been carried in the period between August 19th and December 31, 1959, unless I misread your report?

A. That's correct.

Wemple—Cross

Q. Most of the flights would have occurred after October 1, 1959, would they not?

A. That is correct.

Q. In the light of the time of the year and the number of passengers that you are putting on these flights, do you still believe that your approach here is realistic?

A. I do.

The demand for places on the jets that were flying in those days was quite high.

Q. All through the winter months?

A. Through the winter months.

Q. Other than anything you have already told us, can you give me any facts upon which you base that answer?

A. I can remember reviewing both Pan American and TWA load factors that were achieved in that early period and being impressed that they were remarkably high. I do not have statistics that I can quote you here.

Q. Did you make a record of your review or is that something else that was discarded?

[Tr. 5709] A. I discarded the review that I made prior to the presentation of this report.

Q. Did you make any review or any study in connection with your report as to what TWA's percentages of its revenue plane miles and revenue passenger miles flown with jets in 1960 compared with the same percentages for Pan American were?

A. I recall making no such study.

Q. Did you not think it pertinent to the kind of report that you are presenting here, Mr. Wemple?

A. No, I did not think it necessary for this determination.

Q. The data to make such calculations are all available, are they not, Mr. Wemple?

A. They can be taken off of some of the CAB Form 41 schedules, I believe.

Wemple—Cross

Q. I will state these figures to you and you may check them if you so desire.

That in the year 1960, TWA's percentage of plane miles flown in jets was 58 and Pan American's—

A. Excuse me, sir. This is TWA International Division, total plane miles divided into the plane miles operated with jet aircraft? Am I correct on that?

Q. I think that's the way it is calculated, yes.

[Tr. 5710] Mr. Williams: Mr. Special Master, if this is a question, I object to it. The witness has already said it is not pertinent.

Counsel, if he wishes to make a statement, may do so, but we undertake no obligation to check these figures.

Mr. Hayes: I am not bound by the witness' statement of what is pertinent, as I understand the cross examination.

The Special Master: Not for purposes of your argument.

Mr. Hayes: I will ask a question.

I will make a statement as to what my question is based on.

Q. To resume, TWA's percentage of jets to total plane miles in 1960 was 58 and Pan American's 60.5.

And of passenger miles in jets, TWA's percentage was 80.2 and Pan American's 79.4.

I ask you, assuming the accuracy of the figures, and you may check them if you so desire, whether the fact that TWA's high percentage of passenger miles, higher than Pan American's flown in jets, should not be considered in determining comparative operations of the two companies.

Wemple—Cross

A. I think those figures are completely consistent [Tr. 5711] with our estimates that are set forth here for Chapters II and III.

Mr. Hayes: Could I have the last part of the question again where I said "And I ask you"?

(The question was read.)

The Witness: I do not think it was necessary to consider these figures and as you state them I see nothing inconsistent between these figures and the calculations in our report.

Q. I gave you the figures for 1960. Your answers would be the same, I assume, if I gave you similar figures for the years 1961 through 1965; is that correct?

A. Our estimates don't go beyond 1963, but—

Q. To 1963 then.

A. That is correct.

• • • • •

[Tr. 5733] • • • Q. Is it a fact that actually during the period covered by your report, the jet seats made available by TWA and the passengers carried by TWA grew more rapidly than the jet seats made available or the passengers carried either by Pan American or by all IATA carriers?

A. I have no data on that point, and, therefore, no way to answer.

Q. Can the data be obtained from your report?

A. No, sir.

Q. It cannot?

A. It cannot.

Q. Not even from the tables on pages 21 and 23?

A. Your question related specifically to jet seats. The table on page 23 is all seats. So, the answer, therefore, is no.

Wemple—Cross

Q. Did you make any such calculation?

A. I did not.

Q. You have told us, of course, that so far as TWA is concerned, after 1959 all of the transatlantic plane miles, all of the plane miles flown by the International Division, were jet plane miles, except for certain required or special piston miles.

A. Could you refer to a particular page for that [Tr. 5734] statement, if you want me to confirm—

Q. Yes, page 18. I thought you knew your report sufficiently well that I did not have to refer you.

A. I assume you are asking a question?

Q. I did ask a question, Mr. Wemple.

A. I would like—

Q. Page 17, I think it is.

A. (continuing)—it read, so I can answer it.

The Special Master: Read the question back.
(The question was read.)

A. Our estimates of the reconstructed TWA airline operation with the additional jets indicate that in our opinion the statement of your question would have taken place.

Q. From the tables on pages 21 and 23, can one determine whether the total seats offered by TWA and the total passengers carried by TWA, transatlantically, increased more rapidly than the total seats offered or passengers carried by either Pan American or the foreign carriers?

A. The basic data from which that calculation could be made are there.

Q. You have not made the calculation?

[Tr. 5735] A. I have not made it.

Wemple—Cross

Q. Do you know to what extent, if at all, after, let us say 1959, both Pan American and the foreign air carriers were operating jets as against pistons?

A. I do not have specific quantitative data on that point.

Q. Do you know whether during any of the period covered by your report transatlantic load factors were declining?

A. Yes.

Q. To what extent did they decline?

A. I do not have the load factors here. I cannot recall them offhand.

Q. They can be calculated from the data in your report, can they not?

A. For transatlantic flights, yes.

Q. That is all we are talking about, isn't it?

A. Load factor—I thought by your question you were relating to TWA's International Division operation or Pan American's Atlantic Division.

Q. I am relating my question to your report, which has to do with transatlantic. At least, I understood it did.

A. Pages 21 and 23 certainly have to do exclusively [Tr. 5736] with transatlantic.

Q. From those data can the load factors be determined for the years in question?

A. For transatlantic flights, yes.

Q. Do the load factors show a drop in load factors after 1959?

A. I believe they do, but I am not sure.

Q. You have not made the calculation?

A. That is correct.

Q. When I asked showing a drop, was that true not only of TWA but also of Pan American and IATA carriers?

Wemple—Cross

A. Not having made the calculation, I cannot answer your question from knowledge of the numbers.

Q. For 1960, taking the data that you set forth at pages 21 and 23, I calculate that in the year 1960 TWA had a 63 per cent load factor, which was a drop of 1.6 per cent from 1959; that Pan American had a 68.5 per cent load factor, which was a drop of 10.2 per cent from 1959; and that all IATA carriers had a 63.6 per cent load factor, which was a drop of 2.4 per cent from 1959; and that in the year 1951, TWA's load factor dropped 13 per cent, Pan American's dropped 15 per cent and all IATA carriers dropped 13 per cent.

Assuming the accuracy of my arithmetic, what is [Tr. 5737] your explanation for the 1960 and 1961 load factors?

A. I believe we went over that yesterday. The load factor is the result of adding more seats than achieving an increase in passengers.

Q. Yes, we had that much. You defined a load factor. I am asking you what your expert opinion is as to these changes in load factors in 1959 and 1960. I have never asked you that question before.

A. I am afraid I do not understand the question.

Q. Without repeating—I will repeat the arithmetic, if you want me to. I prefer not to, to save time.

A. I have notes on the arithmetic.

Q. Fine. I asked what your opinion as an expert was as to why those load factors changed as they did change in 1960 and 1961.

A. I have nothing further to add.

Q. In 1962, Mr. Wemple, TWA's load factor went up 1.9 per cent, Pan American's went down 3.6 per cent and all IATA carriers went up 6/10 of 1 per cent.

Have you any expert opinion as to why those changes took place in 1962?

Wemple—Cross

A. TWA and the grand total of all IATA carriers obviously achieved more passengers than their increase in number of seats.

【Tr. 5737A】 With Pan American, the arithmetic was different, in that Pan American added more seats than they achieved an increase in passengers.

【Tr. 5738】 Q. You are just telling me what the arithmetic shows. I am asking you for an opinion as an expert as to the reasons for those changes, if any, if you know them.

A. The reasons for those changes are the way in which individual airlines were operated, and in summary, the way all the IATA transatlantic carriers were operated during those particular years.

Q. You have not made a study of those operations to give us any opinion?

A. I have not made a study of those operations to give you specific reasons as to why each airline's results in load factors turned out the way they did.

Q. As part of your study, did you or did you not give consideration to seasonal variations in load factors?

A. I am generally familiar with seasonal variations in load factors. I therefore fundamentally did give consideration to those seasonal variations.

The seasonal variations are not a part of our calculation of changes in gain from operations. So, therefore, they are not specifically reflected in these calculations which are set forth in this report.

Q. Does your answer mean or does it not that you considered the variations, but that the variations did 【Tr. 5739】 not enter into your calculations?

A. That is correct.

Q. Did you, as part of that consideration, calculate what the seasonal variations were?

A. I did not.

Wemple—Cross

Q. What consideration then did you give to the load factors, the varying load factors during the year?

A. I assume you mean what consideration did I give to variations in load factors throughout the different seasons of the year.

Q. That is right.

A. And I repeat, they were not used in our calculation.

Q. But you previously answered that you did consider them. You have also told us that you did not use them.

I want to know what you mean when you said you did consider them.

A. I knew of the existence of the seasonal variations in load factor, and in determining the way in which these estimates could be put together, most soundly, I elected to use the annual average figures or annual figures rather than individual monthly or seasonal figures.

Q. Of course, even the monthly load factors were [Tr. 5740] available to you from the IATA statistics you used, were they not?

A. They could have been calculated.

Q. Do the load factors vary not only during the months of the year but also with the direction of the flights as to whether they are eastbound or westbound?

A. Yes.

Q. According to the IATA figures which you used, TWA in June, 1960 had a 92.3% load factor eastbound, which was higher than the load factor of Pan American or of all IATA carriers for any month in that year, and westbound TWA had a load factor of 91.9% which was higher than the load factor Pan American or all IATA carriers had in any month that year.

Would that indicate to you that TWA in 1960 was attracting more passengers than its competitors?

Wemple—Cross

A. I have no idea—correction. Those percentages which you gave me would not enable me to answer that question, whether they were or were not attracting more passengers than its competitors.

Q. You cannot tell?

A. Not from those figures.

Q. Can you tell from any of the figures that were available to you?

[Tr. 5741] A. I certainly could have looked at the IATA monthly passenger figures for TWA, Pan American and the other airlines for June of 1960 by direction to determine whether or not TWA had attracted more passengers than the others.

Q. But you did not do so?

A. I did not do so.

Q. The IATA statistics, in fact, publish the load factors, do they not?

A. Usually, yes.

Q. I notice from the monthly IATA figures which you used that by November 1960, TWA's load factor had dropped to 34.5 per cent, Pan American's to 39.2 per cent and IATA's to 37.7 per cent eastbound.

Does that indicate to you—

A. I did not get the Pan American figure.

Q. 39.2 per cent.

A. And the IATA figure?

Q. 37.7.

Does that indicate to you anything other than a seasonal drop?

A. I have not made a quantitative study of the seasonal variations. I have no idea whether that is a normal seasonal change.

[Tr. 5742] Q. You have no opinion on the subject?

A. No opinion.

Wemple—Cross

Q. Do you know that in the year 1961 the load factors of TWA, Pan American and all IATA carriers failed to reach the load factors of 1960?

A. I am not surprised. I did not remember that specific point.

Q. Do you know that they failed to reach in 1962 their 1960 load factors?

A. I am not surprised. I did not remember those specific numbers.

Q. And that they similarly failed to meet them in 1963?

A. My answer is the same.

Q. According to your Exhibit B, it is indicated—your report—that in the winter months of 1961 to 1962 there was a considerable shift of 331s from the International to Domestic service.

That is correct, is it not?

A. That is right.

Q. Despite that shift, according to the monthly IATA figures, thus taking capacity out of International, TWA nonetheless had low load factors, as did the other carriers [might mention during those months.

[Tr. 5743] Would that indicate to you that there was a lack of market to be served transatlantically?

A. It would indicate to me that TWA believed that it could find a better use for those aircraft elsewhere than on International Division routes, and therefore they made the switch from International Division assignment to Domestic Division assignment.

Q. Does it also follow from your answer that if planes could have been operated profitably in the International Division, or at least as profitably, they would have been kept in the International Division?

A. I have no basis for answering that question.

Wemple—Cross

Q. You do not know? You did not inquire into that?

A. I did not inquire.

Q. Is it part of your opinion as expressed in your report that TWA could capture additional passengers with the additional planes and seats as well in months of low load factors as in months of high load factors?

A. The only opinion expressed in our report is that TWA would have maintained its historical correlation between per cent of annual IATA seats and per cent of annual IATA passengers.

* * * * *

【Tr. 5769】 A. —which I believe I would have to know how you were going to use the term “transatlantic passenger,” “beyond the gateway passenger” and the term “other than transatlantic passenger.”

The Special Master: Aren't you using it here for the purpose of finding out whether the fares are included in the transatlantic fares?

Mr. Hayes: That is right.

The Witness: The revenue figure at the top of page 27 includes revenue for carrying a person across the Atlantic and wherever else TWA's International Division happens to operate a flight. All of that revenue is in there, whether it be beyond the gateway or for the transatlantic trip.

Q. You have already testified to that.

A. All right.

Q. How do you separate out beyond gateway passengers? What is your definition?

A. I have not done so in this report.

Q. I know you have not.

Wemple—Cross

What would be your definition?

Mr. Williams: I think this is repetitious.

Mr. Hayes: I thought it was settled, but apparently I misunderstood his prior testimony.

【Tr. 5770】 Mr. Williams: Let us look at the record when we have a chance.

Mr. Hayes: I thought it was defined.

Mr. Williams: I thought it was, too.

Mr. Hayes: Apparently it hasn't been.

A. There are several kinds of beyond gateway passengers.

There are those that board a flight at a point such as Paris and travel to Geneva or Zurich or Milan.

There is another beyond the gateway passenger who has come on a transatlantic flight that stops at Paris and continues to Milan. He is both a transatlantic and a beyond the gateway passenger.

So there can be overlap in this definition and one must be careful.

Q. You do not, as you sit here, give us any precise and exact definition then of beyond gateway traffic?

A. That is correct. I give you those two general definitions.

Q. On the top of page 27 still, the revenues as you have already made clear, including all revenues, necessarily include first-class, coach and economy?

A. That is correct.

* * *

【Tr. 5773】 * * * Q. As a matter of fact, in reference to Defendants' Exhibit 242 for identification, it indicates that for 1962 and 1963, there was no coach revenue?

A. That is correct.

Wemple—Cross

Q. Let us take economy then and coach and economy when they both existed.

A. Yes.

Q. Did the revenues from coach and coach and economy increase each year historically after 1960?

A. I believe they did.

The Special Master: Percentage-wise?

The Witness: Percentage-wise, too, I believe. Whether that went through the entire period of 1963 with a per cent change each year I am not sure.

Q. You mentioned with respect to beyond gateway revenue your reasons for concluding that they would increase them in the same proportion as the transatlantic revenue.

Are you also assuming that the beyond gateway [Tr. 5774] revenue passenger miles would have increased in the same proportion as the transatlantic miles did?

A. We made no such assumption.

Q. Did you make any study at all of beyond gateway operations in terms even of revenue miles or available seat miles or load factors?

A. I do not recall any.

Q. It certainly is no part of your report?

A. That is correct.

Q. Did you make any study of the competition TWA meets in beyond gateway segments?

A. No detailed study.

Q. Did you make any general study?

A. I don't believe I would identify the consideration we gave as a study.

Q. Is there any consideration you gave over and above anything you have already testified to?

A. I am generally familiar with the competition TWA faced in its flights beyond the gateway cities of London,

Wemple—Cross

Paris, Frankfurt and Rome, and it was with the background of that general familiarization that we selected this particular method for calculating the changes in revenues.

Q. By the way, isn't Lisbon considered a gateway [Tr. 5775] city, too?

A. Yes.

Q. I thought it was. You always mention the other four and never mention Lisbon.

A. That is correct.

Q. Did you make any assumption or any studies as to the airline from which TWA would capture additional passengers beyond the gateway?

A. I did not.

Q. Did you make any assumption as to a transfer of seat miles from Pan American beyond the gateway?

A. I did not.

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[Tr. 5777] * * * Q. With respect to this table on the top of page 27, as you have already explained to us, as I understand it, you have arrived at the percentages of increase you apply there via the table on the bottom of page 26 by basing your revisions on what you have referred to as the correlation of the TWA percentage of seats and passengers and so on as shown on the chart on page 24.

A. That is correct.

Q. Have you determined what, if any, correlation existed—that was historical of course, was it not?

A. That is correct.

Q. Have you determined what, if any, correlation exists between the transatlantic seats TWA actually offered and the International Division passenger revenue which you show on the top of page 27?

A. I have not done that correlation analysis.

Wemple—Cross

Q. Or have you done it on the basis of any correlation between the TWA passengers actually carried and the international revenue which you show on the table at the top of page 27?

A. No, I have not done that correlation.

Q. Should there be correlation apparent between the [Tr. 5778] seats TWA actually offered or the passengers carried and its international revenue?

A. I have no reason to expect correlation.

Q. Why would there not be, Mr. Wemple?

A. Well, it's a historical—these are historical facts you are asking me about—

Q. That is right.

A. (continuing) —and correlation, statistical correlation does not come between those series, and, as I simply say, I have no reason to expect that these two series or three series of numbers would show correlation between each other.

Q. By the first part of your answer, I don't know what you meant.

A. Well, correlation is a statistical measurement, and it is very unusual to find correlation that is statistical correlation between series, and I would be surprised if there was correlation between seats and revenues and between passengers and revenues.

Many things affect, for example, the revenues produced per passenger, and these things have changed over the period of time that we are talking about.

Q. Would you please explain what you mean by statistical correlation between series?

[Tr. 5779] A. There is a statistical test that one can apply to two series of numbers to determine the degree of correlation. This is a long, complicated formula, and—but

Wemple—Cross

nevertheless, it is one that is commonly used to determine correlation between series of numbers.

Q. Let me get away from the word "correlation." I don't want to get into any complicated statistical approaches.

Should there not be a relationship between the number of seats offered or the number of passengers carried and the International Division revenue, or should there not? Should there or should there not?

A. I would expect that there would be a general relationship between the number of passengers carried and the International Division passenger revenues.

I would be surprised if there was any particular relationship between seats and passenger revenues.

Q. But there should be as to passengers?

A. A general relationship, I would expect.

Q. Did you consider using that historical relationship in your approach to your study?

A. No, I did not.

Q. You did not consider at all?

A. Well, I considered it and I discarded it.

[Tr. 5780] Q. Did you make any calculations based on it?

A. I don't remember whether I did or not. I probably did. And one factor in discarding it is that revenues are, of course, affected by the fares that are charged in a particular period of time, and this is a factor that is obviously without particular relationship to numbers of passengers.

Q. By the way, do those calculations, if you made them, still exist?

A. They do not exist, no. One possible exception to that last statement. It may have been that there were some revenues per transatlantic passengers used in the February

Wemple—Cross

1962 report. If it is important, I will look. I have a vague recollection.

Q. What is it you have in mind? I don't know.

A. That's Exhibit 214. No, I see the thing I was thinking of. It is on Exhibit E, and it is a figure of international passenger miles per transatlantic passenger handled.

Q. It is not the figure you thought was there?

A. No.

Q. You are referring to Exhibit 214?

A. Exhibit 214 and Exhibit—what did I say?

Q. E.

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[Tr. 5783] A. There was a plan at one time to concentrate the jets on transatlantic service and use the pistons "beyond the gateway."

Q. Was that plan ever put into operation?

A. I believe it was.

Q. How long was it continued?

A. I do not know.

Q. When was it abandoned?

A. I do not know. I would surmise that the piston mileage for the International Division, which I believe—which is set forth on page 17, shows that it was essentially eliminated by the year 1962.

So I presume that by that year the jet aircraft had come into general use on beyond-the-gateways flights.

Q. Did you make any inquiry as to whether TWA's beyond-gateway passengers increased, in fact, in the period covered by your report?

A. I made no such inquiry.

Q. You show an increase of your transatlantic passengers of quite a substantial number from 1959 to 1963, going all the way from 146,359 to 359,000, more than doubling.

Wemple—Cross

Did you make any determination at all to see whether beyond-the-gateway passengers doubled or what relationship they bore to the transatlantic passengers?

[Tr. 5784] A. I did not.

Q. You did not consider it important to make such a determination?

A. I did not consider it important. I might add also that I am not sure as to the practicability of making such a determination.

Q. Meaning what by that?

A. Whether or not one can get a good measure of "beyond-the-gateway passengers."

There is this problem that we have discussed before of definition.

Q. Can you not arrive at the figures of beyond gateway by deducting from the total number of passengers handled by the International Division those who were on transatlantic flights?

A. No. As we have set by our—well, that gives you one measure of beyond-the-gateway passengers. It does not indicate how many of the transatlantic passengers were also continuing beyond the gateways.

Q. I thought we had agreed on a definition of beyond the gateway at the beginning of this session.

A. All right, within the limits of that definition, my answer to your question is no.

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[Tr. 5802] Can you define that for us?

A. Annual yield figures are obtained by taking the annual revenue from transportation which has been determined at the end of the year by TWA and its public accountants and dividing that by the number of revenue passenger miles that have been recorded for the division's operation

Wemple—Cross

for the year. And it gives a figure in terms of cents per mile.

Q. Is yield also used in connection with the revenue per mile on a segment basis?

A. I guess the yield is used for a wide variety of things. The definition I have given applies to the figure that we quote at the bottom of page 30 which happens to relate to Domestic Division yield.

Q. That is an annual figure?

A. That is an annual figure.

Q. Do you know whether the fares per mile are higher beyond the gateway than they are transatlantically?

A. No, I do not know the specific answer to that.

There are, of course, many, many fares beyond the gateway, and I do not know what their individual per mile rates are.

Q. You made no study of what the fares beyond gateway [Tr. 5803] cities were—

A. I did not.

Q. —on per mile basis—

A. I did not.

Q. —as against transatlantically?

A. I did not.

Q. Not having made any study, I gather you have no opinion as to what would be a fair rate per mile to apply to determine the revenue that could be estimated for beyond gateway mileage?

A. It would be a very difficult estimate to make because of the difference in types of tickets that are used for various kinds of transatlantic and beyond the gateway travel.

Q. Would it be appropriate to estimate beyond gateway revenue passenger mile by estimating the average length of beyond gateway trips and multiplying that figure by the number of beyond gateway passengers?

Wemple—Cross

A. I would need to have the first part of that question repeated, please.

Mr. Williams: Could you read it back, please?
(The question was read.)

A. It would not be appropriate to use that method of estimating for my purposes or for this particular report.

[Tr. 5804] Q. What is inappropriate about it?

The Witness: Would you please read the rest of the question?

(The question was read.)

A. I would have no idea how to estimate the number of beyond gateway trips and to get the number of beyond gateway passengers which could be converted into revenues. I think it would be a very difficult task.

Q. So far as you know, it cannot be done?

A. No, I—I did not mean to say that.

Q. You are not at all sure it cannot be done, are you?

A. That is correct.

Q. But you did not do it?

A. I did not do it.

Q. In connection with the same table on the top of page 27, you include charter revenues, and I believe you have already testified that these percentages of increases being applied as they are to International Division revenue are by virtue of that very fact applied to charter revenues?

A. That is correct.

Q. Did you make any study of the charter revenues that TWA historically received during the period covered by your report?

[Tr. 5805] A. I thought I answered that question this morning. I will re-answer it.

Q. Maybe you did. I don't remember it. Pardon me if I ask it again.

A. I reviewed charter revenue statistics in this period. That was about the extent of my study of them.

Wemple—Cross

Q. Did your examination include a determination of the number of charter flights each year?

A. No.

Q. Or the routes flown?

A. No.

Q. Or the number of passengers carried?

A. No.

Q. Or the character of the passengers by nationality or civilian or military?

A. No.

Q. Or the amount of the charter revenue?

A. I think I just answered your point on the amount of the charter revenue.

Q. You mean that it is included in the total figure of revenue?

A. Yes.

Q. But I mean, did you try to segregate out the [Tr. 5806] amount of the charter revenue?

A. No, I didn't.

Q. Did you examine charters from the angle of the equipment used in each of these years on charter flights aside from the 400,000 miles that you gave us for one year?

A. No.

Q. In your assumption that the charter revenue would have increased in the same proportion as to the total international revenue, did you take the further step of determining from what airline the charter passengers would have been captured?

A. We did not make the specific assumption respecting the charter revenue.

However, we did not consider which airlines would have been those who would have lost charter passengers that would have gone to TWA.

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Wemple—Cross

[Tr. 5862] By Mr. Hayes:

Q. What do nonscheduled transportation services consist of?

A. That was also a question that was in the transcript on which I was to report, page 5764 of the transcript, and the CAB Manual on Uniform Systems of Accounts and Reports, Section 9, Functional Classification—Operating Revenues, Sub Account 3200, Nonscheduled Services, has a paragraph which describes the nonscheduled transport services. And the essential item for TWA is from the performance of aircraft charter services.

Q. Anything else included?

A. The paragraph includes transportation of air traffic between points not prescribed in certificates, and from performances of other transportation services not constituting an integral part of services performed to—correction—services performed pursuant to published schedules filed with the CAB.

Q. What was the reference to the CAB charter accounts?

A. This is on a sheet labeled "Profit and Loss, Section 9, Functional Classification, Operating Revenues, Sub Account 3200."

Q. Could I see it?

[Tr. 5863] A. Certainly.

Q. I thought you said Account 3200?

A. Isn't that the number?

Q. Oh, way down underneath. The heading is "3900." I see. Now, I have it. That is a subheading.

I might say that that appears in Uniform Systems of Accounts, Section 9, page 53.

Did you make any inquiry as to whether there was included in the total for 1959 of 1,890,000 items other than charter?

Wemple—Cross

A. I assume you are referring to these other items which I have just read, which are to be included in the nonscheduled services.

Q. Correct.

A. I did not make a specific inquiry.

Q. Did you make any general inquiry?

A. Yes.

Q. Of whom?

A. Of TWA people.

Q. Of whom?

A. I do not remember.

Q. When?

A. Probably some time during the past three years.

Q. Do you have any record?

[Tr. 5864] A. No, sir.

Q. It is your recollection that you were told that the only items there that were included in that amount were charters?

A. No. My recollection is that that account was considered to be essentially all charter revenue.

Q. It was considered by whoever you spoke with in TWA?

A. That is correct.

Q. But you made no study?

A. I made no study.

Q. Proceed.

A. The next item I have on my list, again, is from page 5764, and I was to report back on the item called "Other transportation," which is listed on Schedule 2-2M, and which for the year 1959 was \$30,000 and is similarly quite small in the years that follow.

Other transportation is, for example, where TWA records fees that employees pay for travel on TWA.

Wemple—Cross

Currently, the \$3 youth fare charge goes into other transportation.

It is a small amount of miscellaneous transportation revenue.

Q. All right, sir.

[Tr. 5865] A. That is all I have to report.

Q. At transcript page 5621, you testified, in substance, that you may have made a calculation as to how many flights would produce 17,000 additional seats, the figure which appears at page 47 of your report, and that you would check your Volume IV for this calculation.

Have you done so?

A. I did so and I found nothing.

Q. You found no such calculation?

A. That is correct.

Q. At transcript page 5765, you said you would determine whether TWA conducted charter operations after 1958, having to do with freight, and whether the freight items which appear on Schedules 2-2M now marked Defendants' Exhibit 242 for identification for the years 1959 to 1963 are limited to scheduled freight operations.

A. The freight revenue listed in those 2-2M figures is for scheduled service, freight revenue. There is a very small amount of freight charter in the nonscheduled transportation services figure, which we have mentioned heretofore.

Q. Did you determine the amount?

A. No, sir. As far as a specific dollar figure, no, we did not determine that.

[Tr. 5866] Q. Is that testimony based on the same recollection of a conversation three years ago that somebody told you that?

Wemple—Cross

A. Plus my own observations in and around TWA during this period of 1959 to 1963 when I was working on various jobs for TWA.

Q. Anything else?

A. That is all.

* * * * *

[Tr. 5868] Q. Do you have before you, Mr. Wemple, Defendants' Exhibit 245 for identification?

A. I do.

Q. The International Division which is headed Sheet 2 of 2.

Specifically—

A. One moment, please.

I have it.

Q. Specifically account No. 6137 on that page. Do you identify it?

A. Yes, communications purchased.

Q. I notice that for the years 1959 through 1962, they range between a little over a half million to a bit under three-quarters of a million until 1963 when there is a minus amount of \$53,000.

What is the explanation for the minus amount in 1963?

A. That TWA changed its method of obtaining communications from purchase to some other form.

Q. How would one get a minus amount in a communications purchased account?

A. It could have been a credit on an overpayment from a preceding year. That is the only explanation I can think of for it.

[Tr. 5869] Q. That is speculation on your part, is it not?

A. That is correct.

Q. You made no inquiry?

A. I made no inquiry.

I think it is appropriate to state that our estimates were based on changes for each individual year.

Wemple—Cross

Q. In connection with your determination of what expenses were fixed and what were variable, did you make any study of any airlines other than TWA for the purpose of determining whether there was an industry pattern with respect to what expenses varied and what did not?

A. I did not.

We were concerned with what TWA's own experience had been during this period of increasing numbers of jet aircraft being operated.

Q. Is it fair to say that generally speaking at least all airlines would follow generally the same pattern with respect to what expenses were variable and what were not?

A. I have made no such study. I cannot comment on that.

Q. You have no knowledge on the subject at all?

A. That is correct.

Q. I notice when one gets to your costing sheets, [Tr. 5870] Exhibits F, G, H and J in Volume IV, in every instance I believe and I have not checked every single page, the actual column reads "Actual Expense with Revision of Chapter I."

What does that mean, "Revision of Chapter I"?

A. That heading is for Exhibit F. And the revision of Chapter I effects the figures for example on Sheet 5 of Exhibit F under "Depreciation and Amortization Expense."

Q. I find this revision of Chapter I through all of these exhibits, not merely Exhibit F.

A. I also call your attention to the Chapter I on Sheet 3 in Exhibit F.

And I would refer your attention to page 9 of Volume I of our report, wherein it lists certain revisions in rentals expense and revisions in depreciation and amortization expenses.

Those changes have been made in the actual figures, so that the figure that we are using in Exhibit F is an actual

Wemple—Cross

with whatever revisions there were for the calculation of Chapter I.

Q. The same explanation holds with respect to Exhibits G, H and I?

A. G refers to the actual revision for Chapters I [Tr. 5871] and II, and J, for example, revisions of Chapters I through IV.

Q. But insofar as this actual column refers to Chapter I, is it your testimony that what you have done is to throw out the rental expense that was actually incurred and put in the depreciation expense which you show at the bottom of page 9 of your report?

A. That is correct.

Q. That is not explained anywhere in your report that you did that, is it?

A. I thought it was explained adequately by the note at the head of these columns, "Actual Expense with Revisions of Chapter I."

Q. You thought it was?

A. Yes.

Q. You did not take the trouble to write an additional sentence or two so that we wouldn't have to worry about it?

Mr. Williams: No, he did not, Mr. Hayes.

Q. So with respect to those rentals you substituted depreciation, as you say, for the rental expense.

When you eliminated the B-331B expense, did you eliminate the rental also?

A. Yes.

.

[Tr. 5915] . . . Q. Do I understand from one of your last answers that you did not make the calculation on the basis of block hours at all?

Wemple—Cross

A. At some early stage in this work, we may have used block hours. I do not recall specifically whether we did or did not.

Q. If you did, it has been discarded, to borrow your word, and does not exist?

A. That is correct.

Q. I direct your attention, if I may, Mr. Wemple, to page 71 of your report, that is, Chapter V, which deals with 30 as against 20 880s.

Specifically, I direct your attention to a table at the bottom of the page. I note that in the year 1963 you have no added costs for maintenance.

A. That is correct.

[Tr. 5916] Q. In view of the fact that for the purposes of Chapter V you added 7.9 880s to the fleet for that year, how is it that there is no added cost for maintenance?

A. The 7.9 additional CV-880 aircraft is set forth on page 66.

The top of page 70 shows that that 7.9 additional aircraft was expected to result in 9.4 million additional CV-880 plane miles, and 4.8 million fewer piston aircraft plane miles.

Exhibit J, Sheet 29, shows the calculation of our estimated change in maintenance; that 9.4 million additional CV-880 plane miles is estimated to have been accompanied by an increase, a proportionate increase of \$2.8 million in direct maintenance expense. This is Exhibit J, Sheet 29.

[Tr. 5917] Q. Yes, I have it.

A. The reduced piston aircraft operation which follows immediately, again a proportionate reduction of the piston aircraft operation shows that a reduction of 4.8 million plane miles of piston aircraft operation proportionately would have reduced the maintenance expenses on that aircraft by \$2.5 million.

Wemple—Cross

Accordingly revisions in maintenance burden expense are set forth on the next page, and here we see that the proportionate increase in CV-880 applied maintenance burden expense would have amounted to 1.5 million dollars. A proportionate reduction in the L-1049G piston aircraft maintenance expense would have amounted to a reduction of 1.8 million dollars for a net change, a reduction of 3/10 million dollars in applied maintenance burden expense which just exactly offsets the calculated increase in direct maintenance expense of 3/10 of a million dollars for a net no change which is set forth in the table you referred to at the bottom of page 71.

Q. I understand your arithmetic, Mr. Wemple.

Do you consider it realistic that you could put on 7.9 more planes, jet planes, which are larger than the piston aircraft and fly them 4.6 million more plane miles without any increase in maintenance?

[Tr. 5918] A. Yes, because they are replacing piston aircraft plane miles for a major part of the total mileage that is operated. And the piston aircraft maintenance expense in that particular year was obviously higher.

Q. What do you mean by a major part?

A. 4.8 million miles of piston aircraft mileage were eliminated, which is slightly more than half of the 9.4 million plane miles of jet aircraft operation that was added.

Q. What you are telling us is that the piston costs you have eliminated are about twice as great on a plane mile basis as the jets you put on?

A. That is correct.

Q. Is that what you are saying?

A. That is correct.

Q. The 1049G was a very high cost plane, was it not?

A. In the year 1963 which we have been discussing, its maintenance cost was certainly substantially higher on

Wemple—Cross

per plane mile basis than the maintenance cost of the CV-880 jet aircraft.

Q. Was the 1049G one of the highest cost piston planes?

A. I have not made a study of that particular [Tr. 5919] general premise. I cannot comment on it.

Q. Do you know that the 1649A was one of the highest cost piston planes?

A. It was—I have heard it reported to be one of the highest cost piston planes.

Q. You made no inquiry as to the relative costs of the different piston planes?

A. That is correct.

Q. What was that sheet on Exhibit J? I have forgotten and I lost my place, Mr. Wemple.

A. I believe it started on page 29.

Q. Yes, thank you.

I notice there you are talking about the 1049G.

A. That's correct.

Q. Where do I find in your report that the 1049G planes were the ones eliminated when the assumed additional 7.9 80s were put on?

A. On Sheet 4 of Exhibit J under the term "Note" near the top of the page.

Do you find it?

Q. Yes, sir.

A. It states that the piston aircraft expense changed calculation above and certain others that follow used statistics for the E-1049G aircraft.

[Tr. 5920] We selected statistics for this aircraft to be representative of the several types of Lockheed piston aircraft which would have shown reduced plane miles with additional CV-880 service available—correction—with additional CV-880 aircraft available for commercial service.

Wemple—Cross

Q. What was the basis for your statement there that the costs of the 1049G were representative of the several types of Lockheed Constellations that would have been replaced?

A. In general, we reviewed TWA's reported plane miles for piston aircraft throughout this period.

We reviewed the maintenance and flying operations costs for these aircraft.

Q. When you say these aircraft, which aircraft, Mr. Wemple?

A. There was the L-1049G, there was the L-749 and 749As usually run together with it.

I believe there were some L—no, correction. There was no L-049.

My recollection is that in the year 1963, the bulk of the piston aircraft mileage was operated with 1049G aircraft and with 749 aircraft, and that the 749 aircraft were generally assigned to the shorter segments, [Tr. 5921] and it appeared to us that a most reasonable method of calculating these estimates would be to use the 1049G costs.

Q. You already told us that you had made no comparative study of the costs of the different piston aircraft.

A. As such.

Q. How then can you tell that the 1049G was representative of the costs of all the Constellations if you made no such study?

A. I did not mean to make that statement. We simply as it says—

Q. Which statement?

A. That you just made.

Mr. Williams: Let him explain. You just asked him a question. Let him answer it.

Mr. Hayes: All right.

Q. Go ahead.

Wemple—Cross

A. As set forth in the note we set forth L-1049G statistics to be representative of the several types of Lockheed aircraft which would have shown reduced piston plane miles.

Q. That is the second time you have told us that, Mr. Wemple. We heard it the first time.

[Tr. 5922] A. I thought I had already answered your question. That was why I was repeating myself.

Q. Have you or have you not testified just within the past ten minutes that you made no comparative study of the costs of the different kinds of piston aircraft?

A. I did not make that study which you described as an overall study on the comparative costs of piston aircraft.

Q. On what factual basis did you determine that the 1049G costs were representative of the costs of all the piston airplanes that would have been replaced?

The Witness: Would you read that last part of the statement over again, please?

(The question was read.)

A. What I am trying to say is that we did not make that statement. The statement that I had made here is different from that which is contained in your last question:

The statement that we have here is that we selected statistics of a 1049G aircraft to be representative of the several types of Lockheed Constellations that would have shown reduced piston miles.

.

[Tr. 5930] Q. It is very easy to determine the costs per plane mile, is it not, of the different kinds of Constellations that TWA actually operated?

A. For an annual period, yes.

Q. You did not make that determination?

A. I did not.

Wemple—Cross

I beg your pardon. I did look at operating costs for the various types of piston aircraft insofar as flying operations and maintenance were concerned I think for the 1049G and the 749.

I do not remember the results of that examination. I discarded the examination. I do not have it.

Q. Your reason for discarding it was not that you found the cost of the 749 is lower, was it?

A. No, it was not.

Q. Do you know if there was any year over this period covered by your report when the cost of the 1049G and of the 1649A was not higher than the cost of the other piston aircraft?

Q. I do not know the answer to that.

.

[Tr. 5944] The Special Master: Proceed.

By Mr. Hayes:

Q. Mr. Wemple, did you ever make any calculation showing the quarterly amounts, if not the yearly, of additional flying operations and maintenance expense that would have resulted from the use of four-engine piston aircraft in place of Martin aircraft?

The Witness: Would you re-read the first part of that question, please?

(The question was read.)

A. I recall making a comparison of, I believe, the flying operations and maintenance expenses combined for Martin aircraft versus a four-engine Constellation on a plane mile basis. And it was that calculation which I was referring to when I agreed with a previous question of yours, that the Martin has a lower per plane mile direct operating cost.

Wemple—Cross

Q. What happened to that calculation, since it is not in your report?

A. I am sure it has been discarded.

Q. Did you consult with anybody concerning it?

A. This was perhaps a year and a half to two years ago. I may have consulted with counsel. I have no recollection of consulting with any particular person.

[Tr. 5945] Q. Did you send the calculation to anyone?

A. No.

Q. Did you send it to Price, Waterhouse?

A. I don't believe so.

Q. Did you have any communication with Price, Waterhouse concerning it?

A. I may have consulted with them at that time, but I have no direct recollection of it.

Q. Do you recall what reason you had for not using it in your report?

A. It was not pertinent to our report.

Q. In what sense?

A. We were simply eliminating piston aircraft service as a result of additional jet service.

We were not remaking the TWA schedule pattern.

Q. What was your purpose in making the calculation?

A. As I remember, someone asked me to make it.

Q. Do you recall who?

A. No.

Q. Do you recall what period was covered by it?

A. Yes, it probably would have been 1959 or 1960 or both.

Q. Did you make similar calculations with respect to other piston aircraft?

[Tr. 5946] A. I recall none.

Q. Do you recall what the study showed, Mr. Wemple?

Wemple—Cross

A. That the Martin aircraft direct cost per plane mile was lower than the Constellation aircraft.

Q. Substantially lower?

A. Yes.

Q. That was the reason why you eliminated four-engine pistons rather than the Martins—

A. No.

Q. (continuing)—in your study?

A. No.

Mr. Hayes: I ask that there be marked for identification as—oh, I have a thing I want to take care of. I wanted to do it. I am forgetting it all the time.

I have here as an exhibit a transcript of the testimony of Mr. Henry Fellows, who was general manager of marketing and sales planning, TWA, at the time before the CAB in the general fare investigation. That was Docket No. 8008, to which reference has been made in the past.

This is his prepared testimony which was submitted at the time. I offer it in evidence as evidence of how TWA in its submission to the CAB [Tr. 5947] actually calculated its costs.

Mr. Williams: May I see it, please?

Mr. Hayes: Surely.

Mr. Williams: Mr. Special Master, we have not had an opportunity to read this exhibit. I realize that Mr. Henry Fellows at the time was general manager of marketing and sales planning for TWA. However, we have not called him in this proceeding.

Whether this is admissible against us, whether it has any bearing on this proceeding or not, I don't know, until I have read it.

Mr. Hayes: The chief reason I am offering it, Mr. Williams, is because of the next to the last page,

Wemple—Cross

but I did not want to pull out a page; I wanted to give the whole thing, in which he shows how TWA in making its presentation in the general fare investigation calculated its costs.

The Special Master: Are you going to ask this witness anything?

Mr. Hayes: About this?

The Special Master: Yes.

Mr. Hayes: No.

The Special Master: Why don't you keep [Tr. 5948] it overnight, Mr. Williams, and we will reserve the offer.

Mr. Hayes: Let us mark it for identification.

The Special Master: Mark it for identification.

Mr. Williams: I may have no objection, but I don't know yet, if counsel could pass to something else.

Mr. Hayes: Would you mark it for identification?

(Testimony of Henry Fellows marked Defendants' Exhibit 251 for identification as of this date.)

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 252 for identification a letter from Coverdale & Colpitts by Mr. Wemple to Mr. Trautlein of Price, Waterhouse, dated October 26, 1965.

(Letter from Coverdale & Colpitts by Mr. Wemple to Mr. Trautlein, Price, Waterhouse, dated October 26, 1965, marked Defendants' Exhibit 252 for identification as of this date.)

Mr. Hayes: I will have to get copies of this made.

[Tr. 5949] Q. Do you recognize that letter as one you sent to Mr. Trautlein?

A. I do.

Wemple—Cross

Q. Is the study referred to in that letter about the Martins and the four-engine aircraft the one about which you just testified?

A. It sounds as though it was.

Q. What four-engine aircraft were you talking about there?

Mr. Williams: Would you wait just a second, please?

Mr. Hayes: Certainly.

A. It was a four-engine—

Mr. Williams: Just a second.

All right.

The Witness: Is there a question?

Q. The question was what four-engine aircraft did you compare with the Martin?

A. I do not remember specifically. It would have been a four-engine Constellation aircraft. I cannot tell you which one.

Q. You do not know which model?

A. That is correct.

Q. What did you mean by the language:

[Tr. 5950] "Please do not use this schedule because we find from further study that this substitution of aircraft probably would not have taken place."

A. May I look at the letter again a minute?

Q. Certainly. I am sorry I do not have extra copies.

A. No, that's not the problem. The problem is my trying to recollect what this was all about.

My recollection is that this was an exercise related to early sale of Martin aircraft, that is, sale of them at dates earlier than they were actually sold, and it had been sug-

Wemple—Cross

gested that this earlier sale would have required the replacement of Martins with four engine Constellation aircraft on particular flights that had been operated with Martin aircraft.

As we got further into the matter, it became apparent that the Martin flights were not eliminated because the aircraft were sold, but they were eliminated for independent reasons having to do with scheduled changes.

And also there was very little direct substitution of four-engine Martin aircraft—correction—of four-engine Constellation aircraft on flights that had been operated with Martin aircraft. The bulk of the change [Tr. 5951] involving the Martin aircraft was simply an elimination of Martin aircraft flights.

That is as I recall the reason for that particular exercise.

Q. You referred to a further study which apparently must have taken place between October 4th and October 26, 1965. By that time you had already been working on this study for some three years.

What further study did you make during those three weeks?

A. Well, as I have just explained, we did the first calculation, as I remember it, simply assuming that four-engine Constellation aircraft would have been used mile for mile for Martin aircraft.

And then as we continued that particular exercise, we went further in our analysis of the schedule patterns, as I have just described, and found that the substitution of four-engine Constellation aircraft for Martin aircraft did not, in fact, take place nor would have taken place.

Q. Who requested you to make this study?

A. I suppose it was authorized by counsel. I have no recollection of who requested us to make the study.

• • • • •

Wemple—Cross

[Tr. 6027] A. As set forth on page 67, we found that TWA's utilization of Convair 880 aircraft when it had 20 and when it had 26 stayed approximately the same. And it is this kind of evidence that supported my decision to assume the same utilization.

Q. By utilization, do you mean the same number of hours per day use of the aircraft?

A. No, sir, I mean in this instance the same number of daily westbound scheduled plane miles.

Q. What about the utilization in the sense of the utilization per day of aircraft?

A. We—these calculations are premised on the assumption that for a given period the total fleet with the additional aircraft would have shown the same hours per day utilization as the existing fleet did.

Q. On what did you base that assumption?

Mr. Williams: Can you add anything to what you have said?

The Witness: I have nothing to add.

Q. I direct your attention to the ratios you set forth at the top of page 28, the ratio of million of plane miles per aircraft for the 331s, and I note that the ratio which was 1.41 in 1960 went to 1.48 in 1961, and then dropped to 1.36 in 1962 and 1.33 in 1963.

[Tr. 6028] What is the reason for the drop in ratio which you there calculate?

A. The schedule patterns that were used for these aircraft operations in those various years were obviously different to the extent indicated by these ratios.

I have no explanation for the difference. They were obviously set up to serve different periods of time.

Q. Would they indicate changes in utilization from year to year, those differing ratios?

A. I would think so.

Wemple—Cross

Q. Did you make any further inquiry as to changes in the utilization as evidenced by the ratios within any year?

A. No, sir.

Q. Did you make any study, Mr. Wemple, as to whether during the period covered by your report, TWA was actually utilizing its jets to the fullest degree possible?

A. I did not.

Q. What consideration did you give in your report to the number of plane miles flown domestically by the 720Bs in 1961 and 1962?

A. We selected the premise that those would have been unchanged by the revisions in fleets which are used [Tr. 6029] as the premises for the various sections of this report.

Q. You assume those plane miles would remain the same?

A. That is correct.

Q. What about the 131Bs in 1962 and 1963?

A. We assumed no change in those aircraft operations.

Q. What about the 331Bs in 1962 and 1963?

A. We assumed those would have been operated with 331 model aircraft.

Q. Your assumption is that the 331s would have operated the same number of plane miles as the 331Bs?

A. That is correct.

Q. Other than anything you have already told us, have you any factual basis for that assumption?

A. Nothing more to add.

Q. After determining your plane miles, your next step was to calculate the number of additional jet seat miles, is that correct?

A. Yes.

Q. That calculation appears at the bottom of page—

A. 28, for example.

Wemple—Cross

Q. 28, yes. Where you multiply the average number of seats and you apply a load factor for the year, is [Tr. 6030] that right?

A. That is correct.

Q. Then you arrive at what you call additional passenger miles?

A. That is correct.

Q. What was your reason for using load factors domestically and not internationally?

A. For the international calculation we had the unique availability of transatlantic statistics, and the remarkable historical correlation between TWA's per cent passengers and per cent seats.

Similar data did not exist for the Domestic Division operation.

Q. You could have used load factors internationally, could you not?

A. I could have I expect.

Q. But you did not?

A. I did not.

Q. Did you try out the International on a load factor basis?

A. I did not.

Q. Domestically, as I understand your report—correct me if I am wrong—you show, for example in Chapter IV for the 880s at page 54 the additional seat miles?

[Tr. 6031] A. That is correct.

Q. You use the average number of 880 seats experienced in 1961 for your additions under the assumptions that the 880s would be on hand in 1960, is that correct?

A. That is correct.

Q. Internationally you showed the net addition of seats after deducting the piston seats?

A. That is correct.

Wemple—Cross

Q. You did not do that Domestically, or did you?

A. We arrive at the same answer, I believe. The calculation is slightly different in its form.

Q. Where do I find it, Mr. Wemple?

A. As you say, the seat miles are on page 54 and then converted into passenger miles. And then there follows on the next several pages the development of the reduced number of piston aircraft passenger miles, which then is converted to a net figure on page 63.

Q. What was the reason for the different treatments Internationally and Domestically, different methods you used?

A. I have mentioned the availability of transatlantic statistics for the International Division which was used in making our calculations.

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[Tr. 6052] Q. The industry.

A. We made no assumption respecting change or not change in industry passengers.

Q. Inherent in your report is there not the assumption that more passengers would be attracted to TWA with this equipment?

A. That is correct.

Q. So they would have to come from some place?

A. That is correct.

Q. You did not follow through to decide where they came from?

A. There was no purpose to be served by that.

Q. You did not make any assumption, I gather then, that the total number of passengers traveling would increase?

A. I made no assumption respecting that point.

Q. So not making that assumption, are you not assuming that the additional TWA passengers that you envision here came from competing carriers?

Wemple—Cross

- A. No, I'm not making any assumption in that respect.
Q. Where are they coming from?

Mr. Williams: I think your Honor, we went through this—

【Tr. 6053】 Mr. Hayes: On International, not on Domestic.

Mr. Williams: —a long time ago.

Mr. Hayes: We never went through this on Domestic.

The Special Master: That is my recollection also that we did not do this on Domestic.

A. It was the history of the beginning of jet aircraft utilization in Domestic service that additional passengers were induced to travel by the availability of the superior jet aircraft.

I make no assumption whether these additional passengers would have been newly induced passengers or diverted passengers or both.

Q. You left that right up in the air?

A. That is correct.

Q. You mention that the airport has something to do with the load factor.

Does the type of terminal, station, have something to do with the load factor?

A. I'm sure it does.

Q. Do you know when the American and United Terminals at Idlewild were completed?

A. It was before TWA, but I do not remember when.

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Wemple—Cross

[Tr. 6059] * * * Q. Did you make any calculation, Mr. Wemple, so far as domestic operations were concerned, as to the percentages of domestic operations flown with jets by TWA and by American, United or the whole industry?

A. I have a vague recollection of having made some such calculations quite a number of years ago.

Those calculations have long since been discarded.

Q. They no longer exist, I take it?

A. That is correct.

Q. Do you recall what those showed?

A. My recollection is that during the early years of this period, TWA operated a smaller percentage of plane miles with jet aircraft than did American.

[Tr. 6060] Q. How much smaller?

A. I do not remember the details.

Q. Do you remember what the situation was in other years?

A. I have no other recollection of results of those calculations.

Q. You do not recall that in each of the years from 1959 to 1963 TWA's percentage of revenue plane miles was higher than American's, except for the year 1960 where it was 4/10 of one per cent lower?

A. I have no recollection of those statistics.

Q. And also higher than United's in every year?

A. I have no knowledge or data on that.

Q. Do you have any recollection that in each of the years 1959 through 1963 the percentage of available seat miles flown with jets in domestic operation, TWA had the same percentage as American in 1959 and much higher than United, and that in every other year TWA's percentage was higher than either American or United, except in 1960 when it was 2.8 per cent lower than American?

A. I have no knowledge of data on that subject.

Wemple—Cross

Q. Or that the same situation obtained during those years with respect to revenue passenger miles flown with jets? Do you have any recollection of that?

[Tr. 6061] A. I am not sure—I have no recollection, but I'm not sure I understand your term "revenue passenger miles flown with jets."

Q. The percentages of revenue passenger miles flown with jets in domestic service, that TWA's percentage was higher than either American or United in every year except that in 1959 TWA and American had the same percentage and in 1960 American was higher by 4.1 per cent? You have no recollection of that?

A. I have no knowledge of data on that subject.

Q. On the domestic scene, did you consider that at any time during the period covered by your study there was an excess of capacity in the industry?

Mr. Williams: This has a familiar ring. I don't know whether—

Mr. Hayes: We covered it internationally before.

Mr. Williams: All right.

A. I do not find any reason respecting capacity by TWA and other airlines to modify in any way whatsoever the estimates that we have set forth in Volumes I and IV.

[Tr. 6096] . . . Q. What is a marginal load factor?

A. I do not know. I am not—let's say I am not familiar with that term. I do not know what you mean by it.

Q. I mean by a marginal load factor the load factor that was experienced when new equipment was added.

A. You mean such as the 90 per cent that TWA and American achieved in early 1959 with their jets?

Q. As against the previous year, whatever it might be.

A. Well, there was no previous year.

Wemple—Cross

Q. Then there would not be a marginal load factor for the jets, if there was not a previous year?

A. No.

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[Tr. 6139] Q. Have you any opinion, Mr. Wemple, as to which between 4B and 4C represents the proper approach or the better approach to the determination of net operating profits?

A. I have no opinion on that matter.

Q. The differences between the two are gigantic, are they not?

A. They are.

Q. Over \$100 million?

A. And also in pages of analysis.

Q. I am delighted you mention that, because the fewer the pages, the greater the money. You have no opinion as to which is better?

A. That is correct.

Q. Though they are over \$100 million apart?

A. I have no opinion.

Q. In 4C you come out with \$50 million-odd, \$51 million or \$52 million, after you eliminate Chapter I having to do with rentals? If you include that, you come out with \$64 million and here you come out with \$170 million, and still you have no opinion?

[Tr. 6140] A. Correct.

Mr. Williams: That is what he said. That is a matter for the Court.

By Mr. Hayes:

Q. Do you consider both of these approaches to be reasonable?

A. Yes, sir.

Wemple—Cross

Q. But you have no explanation as to the gigantic difference between them?

Mr. Williams: That is a different question.

Q. As to the reasonableness, I am talking about. They are both reasonable. You are an expert, Mr. Wemple.

Mr. Williams: Can you add anything to that?

The Witness: I have nothing to add.

Q. Is it part of whatever opinion is expressed in 4B that the 1964-65 profit ratios could be applied to each of the years 1959 to 1963?

A. I chose to apply them to the composite of the years 1959 through 1963.

Q. I know what you chose. Will you answer the question?

Mr. Williams: Read the question, please.

[Tr. 6141] The Witness: You will have to give me the question again.

(The question was read.)

A. It is not.

Q. It is not?

The Special Master: Can I ask a followup question here?

Mr. Hayes: Surely.

The Special Master: Do I understand your last few answers to mean that these two, Exhibit B on the one hand and Exhibit C on the other, are basically computations from assumptions that were furnished to you, and that you have no opinion, as an expert, based on your background, as to which is a more reasonable method of calculating damages in this case?

Wemple—Cross

The Witness: As you have pointed out, the assumptions used for the calculations in 4C are quite different from the assumptions used in the calculation of 4B, and I have no basis for judgment as to which is the proper set of assumptions to be used for the overall damage determination.

I simply represent that with the assumptions in 4C this is an answer. Those are obviously more [Tr. 6142] limited assumptions, although more detailed, than the assumption for 4B.

Mr. Williams: We chose, Mr. Special Master, to think that this was a legal question which would be put to the Court, and I pressed the witness myself for the same kind of answers that Mr. Hayes has been trying to elicit, and for the same reasons he gave me the same answers.

Mr. Hayes: Have you anything further, Mr. Brownell?

The Special Master: I am thinking, but I am not saying.

I have nothing more on this point.

By Mr. Hayes:

Q. Would there be anything inappropriate about applying the 1964-65 ratios which you arrive at to the years 1959 to 1963 separately, assuming there is validity in applying them to the years as a group?

A. We have not set them up to be used that way.

Personally, I think it is better to apply the combination of the two years, 1964 and 1965 to the total of the years 1959 through 1963.

Q. What I am trying to find out is, assuming there is validity in applying the 1964-65 ratio to a [Tr. 6143] five-

Wemple—Cross

year period, what would be improper about applying it separately to each of the years in the five-year period?

A. This has to do with the degree of significance, and I have no problems whatsoever in applying the two-year average to the entire five-year period. I have made no study to determine that the statistical significance is as good or as appropriate, if it is applied to the individual years.

Q. So you made no study to determine that; is that what you said?

A. That is correct.

Q. So you have no opinion on it, I gather?

A. I did express an opinion. I have made no detailed study.

Q. An opinion not based on a study?

A. That is correct.

Q. Mr. Wemple, what is the extent of your experience with passenger airlines?

A. In the fall of 1956 I believe it was, our firm was engaged by TWA and, as has been brought out at various times in this session, we have been engaged on various studies for TWA a great deal of the time since 1956 to date.

[Tr. 6144] I believe it was around 1960 I did a study for BOAC on their sales activity in the United States.

Somewhere along in that period, I did a study for Flying Tiger, which is nominally a freight airline, but had a substantial amount of charter passenger business.

I have done a variety of studies for airports which are—

Q. The question was airlines.

A. (continuing) —only indirectly related. Correct. I believe that's the answer to the question.

Q. The 1956 study for TWA concerned what?

A. This was a review of TWA's operations and organization.

Wemple—Cross

Q. You mean the corporate organization?

A. No, the personnel in the operating organization, if that's the same thing.

Q. Did it have anything to do with forecasting earnings or estimating earnings costs?

A. I believe not.

Q. Then you did two studies for TWA that have come out that you mentioned, one in 1959 and one in 1962?

A. Those are the dates of the reports.

Q. In each instance, as I understand it, TWA supplied you with forecasts prepared by it and you reviewed [Tr. 6145] them and expressed your opinions concerning them?

A. I believe one of those studies involved working with TWA in the preparation of those forecasts, but the answer to your question is yes.

Q. Of course, you have been engaged by TWA in connection with the preparation of the reports, TWA Exhibits 4, et seq. The Flying Tiger is not a scheduled airline, is it?

A. It's a scheduled freight airline. It is not a scheduled passenger airline.

Q. I mean scheduled passenger airline.

A. No, that is correct.

Q. You mentioned BOAC. Did that have anything to do with the forecasting of income and expense for BOAC?

A. It did not. Correction. It had to do with recommendations pertaining to their selling operation in the United States. Those recommendations, of course, involve revenues and expenses.

Q. I mean did it involve an overall study of the revenue and expense of BOAC?

A. It did not.

Q. Were you ever employed by any passenger airline in a managerial capacity?

A. No, sir.

Wemple—Cross

[Tr. 6146] Q. Were you ever involved in decisions as to how aircraft should be scheduled, either as to time or as to routes? I mean the making of the decisions?

A. Well, I am a little confused by your question, but let me just answer the involvement.

As a part of the 1956-57 study with TWA, I spent a considerable amount of time with their scheduling people as to what they were doing and revisions that would be desirable.

As far as participating in the making of the final decision, the answer is no.

Q. Were you ever involved in the making of decisions for any passenger airline with respect to the equipment utilization? By "equipment," I am referring to the aircraft.

A. No.

Q. Were you ever involved in decisions as to routes, as to what routes to seek, what routes to abandon, et cetera?

A. Again, in one of our studies we did discuss extensively the abandonment of certain routes. We did not—I did not participate in the final decision.

Q. What study was that?

A. That was the 1956-57 one, as I remember.

[Tr. 6147] Q. Were those studies made by you of suggestions that TWA made as to what routes would be abandoned?

A. My recollection is that this was simply a part of our overall—correction—a part of our detailed review of TWA's entire operations.

Q. Did you ever testify before the CAB with respect to airline operation?

A. No.

Q. Do you have any writings on the subject of airline earnings and expenses?

A. No. I assume you mean published documents?

Wemple—Cross

Q. Right.

A. No.

Q. I was not referring to the exhibits before us.

Are you a member of any professional society, the membership of which is made up of consultants or experts or management personnel with respect to airline operation?

A. No society that is specifically limited for focused on airline operation.

Q. Specifically, are you a member of the American Institute of Aeronautical and Astronautical Engineers?

A. I am not.

Q. Are you a member of the Society of Automotive [Tr. 6148] Engineers?

A. I am not.

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Wemple—Redirect

[Tr. 6152] * * * *Examination by Mr. Tenney:*

Q. Mr. Wemple, here is TWA Exhibit 4A to which is attached a booklet, "Record of the Professional Experience of Coverdale & Colpitts, Consulting Engineers," which I believe has been marked TWA 4A(2), although it does not **[Tr. 6153]** appear on that document.

A. It does on the copy I have. Perhaps I have your copy.

Q. It is the same booklet.

A. Yes.

Q. That booklet describes in some detail the practice of your firm Coverdale & Colpitts, does it not?

A. Yes, this is our—we call it record of professional experience for the firm.

Q. Would you briefly describe the nature of that practice?

Mr. Hayes: Is this of the firm?

Mr. Tenney: Yes.

Mr. Hayes: Then I object to anything other than the qualifications of Mr. Wemple as an expert. We can't cross-examine the firm.

Mr. Tenney: Part of the qualifications of Mr. Wemple as an expert is his membership in a professional firm.

Mr. Hayes: So far as it has to do with him, his qualifications, I have no objections whatsoever. I object to the qualifications of his firm.

The Special Master: I will allow the line of questioning and see how it develops.

[Tr. 6154] The Witness: Could I have the question again?

Wemple—Redirect

By Mr. Tenney:

Q. Would you describe briefly the nature or the practice of your firm?

A. We render professional services to industry and transportation activities.

I guess it is proper to say that the majority of our engagements, the bulk of our work is involved with estimating the financial results that there will be from a particular project, particularly as to what the net revenue that is available to service debt for a particular project is, and these estimates are usually used in connection with financing of a particular project.

These projects, as I say, can be transportation projects, they can be industrial projects.

Q. How long have you been associated with that firm, Mr. Wemple?

A. I believe it was August 1952.

Q. When did you become a partner of the firm?

A. In the spring of 1960—correction—in the spring of 1954.

Q. You have just described the nature of the practice of Coverdale & Colpitts. Has your—

[Tr. 6155] A. Correction. That—my memory is fuzzy. That may have been the spring of 1956, rather than 1954.

Q. As a matter of fact, that's the statement on TWA 4A, so I assume it is 1956.

A. Yes, thank you.

Q. You just described the nature of the practice of Coverdale & Colpitts. Would that description apply also to your practice as a member of that firm since 1956?

A. The amount of work that I have done on industrial projects has been quite small. Otherwise, it very definitely describes the practice that I have been engaged in.

Wemple—Redirect

Q. Would you turn to the letter which has been marked TWA Exhibit 4A, Mr. Wemple? A. Yes, I have a copy.

Q. 4A(1), I am told.

A. That's the way mine is marked.

Mr. Hayes: 4A(1) is this?

Mr. Tenney: That is what I am told this marking means.

Mr. Hayes: Because the "(1)" was stricken off mine by somebody.

By Mr. Tenney:

Q. At pages 3 and 4 of that letter, you have a list [Tr. 6156] of studies in which you participated or of which you have been in charge.

Would you run down that list, Mr. Wemple, and give us some idea of the financial magnitude of the projects involved?

A. Yes, these were studies that were performed under my direction. I was in charge of them.

The first is an industrial district proposal, which, as I remember, was expected to be about a \$30 million project.

The next is an aerial tramway, which is an \$8 million project.

The next is a study to put a value on a phthalic anhydride manufacturing unit, which, as I remember, was alleged to have been worth about \$1.5 million.

The next is the Connecticut Turnpike project, for which \$459 million of bonds have been sold.

The next is a three-bridge project which is about a \$20 million bond issue.

The next is the O'Hare International Airport development project at Chicago. That was \$125 million bond issue.

Wemple—Redirect

The Honolulu International Airport was a \$14 million revenue bond issue and, as I remember, that was [Tr. 6157] simply a part of about a \$30 million project.

The Palm Beach, Florida proposed airport was about a \$3 million project.

The Denver, Colorado airport terminal was a part of a \$11 million project.

The Flying Tiger Line, at the time we did the study, showed a total asset value of about \$27 million on its balance sheet.

The last study was not financial feasibility, the British Overseas Airway study.

Q. Several of these studies, Mr. Wemple, deal with airports.

Would you say there is a relationship between airports and airlines?

Mr. Hayes: I will concede that aircraft land and take off from airports.

Q. Is there any further relationship between an airline, knowledge of an airline and a study of an airport, Mr. Wemple?

A. The airport operation and capital cost is quite often financed by airlines and it becomes a part of the airlines' operating expense at that particular airport.

The organization of the airport, the physical facilities and actually the airport rate schedules are set [Tr. 6158] often as a result of negotiations with airlines and with references to airlines' financing—financial practices and operating practices.

Q. In preparing this report, have you tried to make full use of your knowledge of the airline industry and your judgment based on experience of what matters were relevant or not relevant?

A. By "report," I assume you mean—

Wemple—Redirect

Q. TWA Exhibit 4C.

A. Could you give me that question over again now that I can identify the report?

Q. In preparing this report, have you tried to make full use of your general knowledge of the airline industry and your judgment based on experience of what matters were relevant and were not relevant?

A. Yes, very definitely.

Q. In preparing this report, have you consulted standard references whenever you considered them appropriate?

A. Well, let me say I have consulted standard references on many, many occasions in the preparation of this report.

Q. Is every such consultation reflected in this report or in your working papers?

[Tr. 6159] A. No. Oftentimes the consultation turned up figures and statistics that showed that the point I was studying or researching was not pertinent. Obviously, there is no reference to that kind of instance.

There were other consultations where the figures proved to be confirming to analyses that we had already made. Again, we made no particular notes or references.

We often copied figures from standard references and our work sheets generally show the location in the standard reference where we got the figures, and there are, of course, many references—many notes in our reports as to standard references which we used as a source of data.

Q. Are there any material considerations lying behind the report in its finished form that are not reflected in the working papers and the reports as they now stand?

A. The matter of my total knowledge and experience with airline matters is, of course, not thoroughly or completely set forth in the report, insofar as it may have influenced my judgment.

Wemple—Redirect

However, all matters and considerations which I considered to be relevant are set forth in the report with reference to estimates and calculations in the report.

[Tr. 6160] Q. TWA Exhibit 4D, Mr. Wemple, is a letter signed by Coverdale & Colpitts, addressed to Mr. Edward J. Morehouse, dated May 2, 1966, and the first sheet of that letter sets forth your estimate as of April 1959 of the operating results which TWA could anticipate in the years 1959 to 1963, with a 63-plane jet fleet.

I show this to you, but I don't intend to ask you any questions on it. Defendants' Exhibit 206 is from your working papers relating to this forecast, is that not correct?

A. That is correct.

Q. On the right-hand side of Defendants' Exhibit 206 as the next to the last entry numbered 14, there is a reference to PAA jets experiencing high load factors on the North Atlantic; is that correct?

A. That is correct.

Q. In answer to questions by Mr. Hayes, you testified that the early Pan American load factors were not set out in your report or in the working papers, but that you had general knowledge of them. Do you recall that testimony?

A. That is correct.

Q. Can these load factors be obtained from public sources?

A. Yes.

[Tr. 6161] Q. Have you since, at my request, prepared a table showing them?

A. I have. I have it here. It sets forth the Pan American Atlantic Division jet aircraft passenger load factors by quarter, starting with the fourth quarter 1958, running through the fourth quarter of 1961, which, of course, is an extension of the period that is noted here which would have ended in April 1959.

Wemple—Redirect

Mr. Tenney: I ask that there be marked as TWA Exhibit 40 for identification this document which is headed "PAA Atlantic Division Jet Aircraft Passenger Load Factors by Quarters, 1958-1961."

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By Mr. Tenney:

Q. Was this document prepared under your supervision, Mr. Wemple?

A. It was.

Mr. Tenney: I offer it in evidence.

Mr. Hayes: May I ask the purpose of this offer, Mr. Tenney?

Mr. Tenney: There was a good deal of talk about Pan American load factors, early load factors [Tr. 6162] in the course of your cross-examination, Mr. Hayes, and I would like to put what those load factors were into the record.

Mr. Hayes: You related this offer, as I understand it, Mr. Tenney, to Defendants' Exhibit 206.

Mr. Tenney: That is correct.

Mr. Hayes: Defendants' Exhibit 206, the assumptions contained therein, could not have gone beyond the first quarter of 1959. These are the load factors through 1961.

Mr. Tenney: That is correct. It goes on past the 1959 period, but I believe that the—

Mr. Hayes: That is why I asked what the purpose of the offer was. If it's just to explain Item 14 on the right-hand side of Defendants' Exhibit 206 and is limited, therefore, to the fourth quarter of 1958 and the first quarter of 1959, I have no objection.

Wemple—Redirect

Mr. Tenney: I would like to put it in for the entire period, apart from the Defendants' Exhibit 206. I think this was a matter of interest as was brought out in the cross-examination.

Mr. Hayes: Then you are not relating it [Tr. 6163] specifically to Defendants' Exhibit 206 or to TWA Exhibit 4D, as such?

Mr. Tenney: I believe it is related to that. It is also related to a subject which was examined upon extensively.

Mr. Hayes: You are not limiting the offer to that?

Mr. Tenney: I am not so limiting the offer.

Mr. Hayes: If it is not so limited, I have no objection.

The Special Master: Received.

(TWA Exhibit 40 for identification received in evidence as of this date.)

By Mr. Tenney:

Q. Mr. Wemple, your report, TWA Exhibit 4C, Volume I, page 9, which is a part of Chapter I—

A. I have it.

Q. (continuing) —in the first table appearing on that page under the headings "Domestic Division" and "International Division," there are entered the B-131 and B-331 respectively.

Mr. Hayes pointed out in the course of his examination that some part of the 331s were used in the Domes- [Tr. 6164] tic Division. Do you recall that?

A. I recall that.

Q. What difference does this make to this portion of your report, that some portion of the B-331s were used in the Domestic Division?

Wemple—Redirect

A. It makes no difference. As set forth in the second sentence at the top of the page, these expenses were taken from the CAB Form 41 reports, Schedule P-5.2.

The total rentals expense for B-331 aircraft is recorded under the International Division reports.

TWA apparently did not transfer any of the rental expense to their report for the Domestic Division for the year 1960. So that this is the total rentals expense, as paid by TWA for the use of the entire fleets during those years irrespective of what division they were used in.

Q. In the course of your testimony on this chapter, Mr. Wemple, you stated that nothing except rental expense and depreciation would be changed, insofar as gain from operations is concerned, if TWA owned the aircraft instead of leasing them.

Do you remember that testimony generally?

A. I remember it.

Q. Are there some types of leases on which other [T 6165] factors would have to be taken into account, if you were computing the cost of ownership as opposed to the cost of leasing insofar as gain from operations is concerned?

A. Yes. Actually, TWA had one of those kinds of leases with Northeast Airlines for Northeast's use of time of the aircraft. And the arrangements for that lease provided for the lessor to pay certain of the maintenance expenses, as I remember.

Now, if TWA had had these aircraft which are the subject of Chapter I on a different kind of a lease which involved the lessor paying certain of the costs, the operating costs for the aircraft, then obviously an adjustment would have been required in operating cost to reflect the circumstance in the lease.

Wemple—Redirect

However, we examined the cost reports in detail for these aircraft for the period when they were leased and we found that the only item that would have been affected was rentals expense and the depreciation and amortization charges for TWA.

Q. So the estimate reflected in Chapter I of your report involved the exercise of judgment on your part as to whether other factors should be taken into account?

A. Most certainly.

[Tr. 6166] Q. Mr. Wemple, would it have been possible to use what has been called in-revenue service dates in your estimates covering the buildup period of the new jet fleets?

A. I presume you mean in lieu of the average number of aircraft available for commercial service which we did use.

Q. That is right.

A. It probably is theoretically possible to do that, although there is no record made by TWA, no summary record maintained by TWA on the matter of number of aircraft in revenue service.

The detailed information from which such a record could be developed does exist in the TWA flight message reports and a few other things. So I suppose it is theoretically possible to have done it.

Q. Would it have been practicable to use the in-revenue service information for the first portion of the period while the fleets were being built up?

A. A calculation of that nature could be made.

Q. Mr. Hayes asked you whether you had made any studies as to what the effects on your revenue estimates would have been if you had used in-revenue service dates, and I believe you testified that you had not. Do [Tr. 6167] you remember that testimony?

A. That is correct.

Wemple—Redirect

Q. Have you since, at my request, made such a study?

A. I have.

Q. Have you made a tabulation of the results?

A. Yes. The—yes, I have.

Q. Would you give it to me, please?

A. That is more than a tabulation of the results. That is the working papers which I used to develop the answers.

Mr. Tenney: I ask that there be marked as TWA Exhibit 41 for identification a sheet headed "Effect of Change in Estimated Change in Gain or Loss From Operations If Number of Aircraft In Revenue Service Used in Place of Average Number of Aircraft Available for Commercial Service," to which there are attached a number of sheets.

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[Tr. 6168] By Mr. Tenney:

Q. Do you have TWA Exhibit 41 for identification before you, Mr. Wemple?

A. I do.

Q. Would you explain what TWA Exhibit 41 for identification shows and how it is prepared?

A. For each of the Chapters II through V, we took in-revenue service dates which are set up at various places in Volumes I and IV of our report, and there is another exhibit which was a letter to Price, Waterhouse, which I don't happen to have with me, which gives in-revenue service dates for some of these items.

Q. I show you TWA Exhibit 4E. Is this the letter?

A. Yes, that is the one.

We took the historical in-revenue service dates and took the reconstructed in-revenue service dates for

Wemple—Redirect

years in which there was a buildup of jet fleets which were the subject of these Chapters II through V.

Using the date when an aircraft went into revenue service, we calculated for each month and an annual average for the particular year involved a figure which is the average number of aircraft in revenue service.

In the period of time when the fleet would have reached its full size, as far as TWA having the fleet on [Tr. 6169] hand was concerned, we then shifted to the average number of aircraft available for commercial service, because by that time all of the aircraft in a particular fleet would have been in.

So we thus have a number mostly similar to the average number of aircraft available for commercial service, but which is calculated for the number of aircraft in revenue service.

We then took those numbers of aircraft in revenue service and went through our calculations that are in Volumes I and IV of our report, and revised the ratios which we used to calculate additional plane miles and to calculate additional expenses for the jet fleets.

The results of those calculations are set forth on the top sheet of Exhibit 41. It shows a grand total of change of an increase of 1.3 million in the change in gain or loss from operations for the Chapters I through V.

I emphasize, if I haven't already stated it, that we made the in-revenue service calculation for both the historical and the reconstructed conditions.

Q. Will you explain what the attachments are to this top summary sheet, so that we can have that in the record?

[Tr. 6170] A. The attachments are by chapter. The first group of papers in each attachment is the calculation of average number of aircraft in revenue service.

Wemple—Redirect

Following that are the revenue calculations from the text of our report.

Following that are the revised expense calculations which are marked pages from Volume IV from our report.

And then following that is a revised summary page from the text of the report.

What we have done in each instance for these report pages is simply mark them with the revised figures that we obtained, using the in-revenue service numbers of aircraft for the years when there was a buildup of fleet, either actual or reconstructed.

Q. Just to make sure that this is clear, as I understand it, then, the sheets from the report that appear in these attachments are photocopies of the report pages as they originally appeared with marks on them to indicate the revisions that you have computed, is that correct?

A. That is correct.

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[Tr. 6173] * * * Q. I show you a sheet which has been marked for identification as TWA Exhibit 4C(IV)(i).

You testified that this represented a revision of Schedule B of your report showing some changes based on information which you had received and reflecting some revisions in TWA's historical reports of aircraft available for commercial service.

Do you recall that testimony?

A. I do.

Q. Was this document prepared under your supervision?

[Tr. 6174] A. It was.

Q. In this table, there are monthly figures. There are also for each year averages showing the average number of aircraft available for commercial service by type on an annual basis.

Wemple—Redirect

What is the source of these annual average figures?

A. We calculated the annual average figures.

Q. From what?

A. From the monthly statistics which are set forth on this exhibit.

.

[Tr. 6176] . . . Q. Mr. Wemple, did you use the monthly averages in the computations of Volume I of your report?

A. No, we used the annual averages that are developed from the monthly figures.

Q. What differences are there in the annual averages on this exhibit from Exhibit B, as it appears in your report?

A. There is one difference for the annual average for an individual type of jet aircraft.

It is in the 1961 CV-880 annual average number of aircraft available for commercial service.

The revision is from the 14.6 figure which we originally calculated, to the revised figure of 14.5.

Q. Is there any revision in the annual averages re- [Tr. 6177] lating to other types of aircraft?

A. There is none.

Q. Have you, at my request, made a computation of what the difference would be in the estimates set forth in Volume I of your report, if you were to use the corrected annual average for CV-880s appearing on this revised schedule instead of the annual averages used on Schedule B, as it appears originally in your report?

A. We have made that calculation.

Q. Do you have the results of it with you?

A. Yes. Again, I have a summary sheet which shows the effect of that change in the annual average for 1961 for the CV-880 on estimates for Chapters IV and V. The total effect is—you can read it. It is set forth there.

Wemple—Redirect

Mr. Tenney: I ask that there be marked as TWA Exhibit 42 for identification a summary sheet—off the record.

The Special Master: Yes.

(Discussion off the record.)

Mr. Tenney: —headed "Changes in improvement in gain or loss from operations for a correction of certain numbers of CV-880 aircraft that TWA actually had in 1961, which changes the annual average number available from 14.6 to 14.5 aircraft and affects slightly the estimates of Chapters IV and V" to which are attached photocopies of pages 63, 64, 71 and 72 of TWA Exhibit 4C(1) marked to indicate certain changes.

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Mr. Tenney: I ask that there be marked as TWA Exhibit 42A for identification a number of other sheets from the report marked to show changes in the nature of revisions of calculations which Mr. Wemple has made in the course of arriving at TWA Exhibit 42 for identification.

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The Special Master: In the absence of an objection, 42 will be received in evidence and 42A will be marked for identification.

Mr. Hayes: 42 will be in the same category as the report itself, subject to our general objections.

[Tr. 6179] **The Special Master:** That is correct. At this point they are both marked for identification.

Wemple—Redirect

By Mr. Tenney:

Q. Would you state what the summary sheet shows, Mr. Wemple?

A. The summary sheet shows that the effect of this change in annual average number of aircraft available for commercial service for the CV-880 fleet that TWA actually had in 1961 from 16—correction—from 14.6 to 14.5 would have affected our calculations set forth in Chapter IV of our report for 1960 by an increase of \$1/10 million in the estimated change in gain from operations; and for Chapter V for the year 1961, an increase of \$4/10 million in the estimated change in gain from operations.

Q. You testified, Mr. Wemple, that in connection with Chapter III of your report, TWA Exhibit 4C, and Schedule C—I guess it is Exhibit C of Volume IV, which gives your computations of aircraft available for commercial service on earlier delivery dates—you testified that you had not deducted in Schedule C any time to reflect the possibility that reconstructed TWA's B-131 fleet would have been reduced by the necessity of returning one plane to Boeing for a two-month period for equipment [Tr. 6180] completion and final certification, such as occurred historically.

Do you remember your testimony generally on this?

A. I do.

Q. Have you determined at my request the difference which such allowance would have made in the estimates contained in your report?

A. I have.

Q. Do you have it with you?

A. Yes.

Mr. Tenney: Off the record.

The Special Master: Off the record.

(Discussion off the record.)

Wemple—Redirect

Mr. Tenney: I ask that there be marked as TWA Exhibit 43 for identification a sheet headed "Changes in improvement in gain or loss from operations for a reduction of two plane months in the number of B-131 aircraft that would have been available for commercial service in 1959 with earlier receipt of fifteen B-131 aircraft, Chapter III," to which there is an attached photocopy of page 51 of TWA Exhibit 4C marked to reflect certain revisions.

I ask that there be marked for identification [Tr. 6181] as TWA Exhibit 43A a series of pages from TWA Exhibit 4C marked with revisions of calculation details which Mr. Wemple has made in coming up to the conclusions expressed in TWA Exhibit 43 for identification.

The Special Master: It will be marked.

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By Mr. Tenney:

Q. Will you state for the record, Mr. Wemple, what TWA Exhibit 43 shows?

The Special Master: In the way of results?

Mr. Tenney: In the way of results.

A. TWA 43 shows that if in our calculations of improvement in gain from operations for the year 1959 for Chapter III in Volume I of our report we had made an allowance of two plane months for an aircraft of the B-131 series being returned to Boeing, it would have reduced our [Tr. 6182] change in gain from operations by one-half million dollars.

Q. I would like to turn now to Volume I of your report, TWA Exhibit 4C, page 27, and specifically to call your attention to the table at the top of that page.

Wemple—Redirect

You will recall that Mr. Hayes asked you a number of questions as to the application of the figures in the second column which is headed "Per cent of Increase in Transatlantic Passengers with Additional B-331 Aircraft" to the figures in the first column which is headed "Actual International Division Passenger Revenue."

Do you recall your testimony on that subject generally?

A. Generally, I do.

Q. At one point Mr. Hayes gave you some figures which were from the CAB Handbook of Airline Statistics, reporting TWA total scheduled international passengers in certain years, and he compared them with the IATA figures of transatlantic passengers set forth in your report and derived a difference which he referred to as TWA's beyond gateways passengers.

Do you remember that generally?

A. I do.

Q. Have you since examined, Mr. Wemple, the CAB [Tr. 6183] Handbook to which Mr. Hayes referred, to see what it shows with respect to the relationship between transatlantic and beyond gateways traffic?

A. I did.

Q. Would you explain what you found and what your conclusions were?

A. Yes. The CAB Handbook had a figure for TWA International Division of total originating passengers for each year.

We then went to the CAB Form 41 Schedule T-4, which gives the development of that figure by individual city and it also gives certain other passenger statistics.

Incidentally, the passenger statistics changed as to details. I believe it was in the year 1960. So that there was a greater choice of passenger statistics to examine for the years 1961 and thereafter.

Wemple—Redirect

We compared those data with the IATA figures and considered the characterizations of the data set forth in the CAB Form 41 Schedules T-4.

It is our opinion that the passenger statistics of enplaned passengers on scheduled service is most nearly comparable to the IATA statistics that we used in our report.

[Tr. 6184] We took TWA's International Division enplaned passengers for scheduled service for the U. S. cities that are served by TWA International Division, and multiplied that figure by 2 to give a transatlantic passenger statistic. The times 2 is, of course, to take the enplaned passenger in the U. S. city which would be an eastbound transatlantic passenger and to take the enplaned passenger—and to multiply it by 2 to represent that transatlantic passenger returning to the U. S.

We then took the difference between this calculated number of transatlantic passengers and deducted it from the total number of enplaned passengers for TWA International Division, scheduled service, and obtained a difference figure which is generally characterizable as the beyond the gateway passenger that you just mentioned.

Q. Do you have a summary of the results of this calculation?

A. I do.

Mr. Tenney: I ask that there be marked as TWA Exhibit 44 for identification a single sheet headed "TWA International Division Passenger Enplanements, U. S. Cities and Other Cities, 1959-1963."

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[Tr. 6185] * * * Q. Will you explain, Mr. Wemple, what TWA 44 for identification shows as a result of your examination?

Wemple—Redirect

A. TWA Exhibit 44 shows calculations of beyond gateway passengers for TWA's International Division as 43.5 per cent of the total International Division passengers for the year 1959.

And for the years 1960 through 1963, the percentage ranged from a low of 32.5 to a high of 35.5, which I believe is a relatively uniform percentage.

Q. What do you conclude from that as to the propriety of using transatlantic passenger figures to determine total International Division passenger revenue in the manner in which you have done it at the top of page 27 of your report?

A. I believe this analysis supports the reasonableness of our work set forth at the top of page 27, wherein for individual years, 1959 through 1963, we have calculated the additional International Division passenger revenue on the basis of the percentage increase that would have been achieved in transatlantic passengers for each individual year.

[Tr. 6186] Q. Mr. Hayes gave you some figures as to beyond gateways passengers that he computed in the method that he described to you, which were quite different from this.

Can you account for that difference, Mr. Wemple?

A. The principal reason for the difference is that Mr. Hayes used a different CAB passenger statistic, which does not correlate particularly well with the number of transatlantic passengers reported by airlines to IATA.

In effect, they are a different series of figures obtained from different sources, as presented by Mr. Hayes.

These figures are all from one source and are comparable.

Q. A little later on in connection with the same table in your report, Mr. Hayes asked you a number of questions about the inclusion of charter revenues, and referred to

Wemple—Redirect

some figures from the CAB Handbook which he stated indicated a decrease in the percentage of charter passengers flown from 41 per cent in 1959 down to 7.5 per cent in 1963, with the 1962 figure being the low figure of 1.4 per cent.

Does such a fluctuation in the number of charter passengers from year to year have any relevance to the table at the top of page 27, Mr. Wemple?

[Tr. 6187] A. No. The table at the top of page 27 is predicated on the belief that TWA's charter business in the International Division would have varied with the availability of jet aircraft, as its transatlantic scheduled passengers would have varied as set forth at the top of page 27.

Q. What charter passengers are you assuming in the table at the top of page 27 that TWA would have carried?

A. A proportion of charter business that was the same as the proportion of charter business that TWA actually carried during each of the individual years.

[Tr. 6188] Q. So that a change from year to year would have what relevance to your assumptions?

A. The estimates for each individual year are predicated on what took place during that particular year.

The fact that there was a change from year to year is not relevant.

.

Q. Would you turn to page 52 of your report, [Tr. 6189] Volume I of TWA Exhibit 4C?

A. I have it.

Q. You state on that page, Mr. Wemple, that you assume TWA would have commenced revenue service with CV880s on May 15, 1960.

In the course of Mr. Hayes' examination, you testified that this assumption was based on instructions from counsel

Wemple—Redirect

and was not based on any examination of the actual experience of Delta.

Do you recall that testimony?

A. I do.

Q. Do you know, Mr. Wemple, when Delta inaugurated revenue service with CV880 aircraft?

A. Yes, it was May 15, 1960.

Q. From what source is that date available?

A. I found it in Delta's annual report for their fiscal year ending June 30th, I believe it is, 1960.

Q. Do you know when the CV880 was certificated for passenger service by—is it the CAB that does that or the Federal Aviation Agency?

A. I understand it was May 1, 1960.

Q. In the absence of directions of counsel, would you have chosen a later date than May 15th for inaugurational service by TWA, Mr. Wemple?

[Tr. 6190] A. For the premise that TWA would have received the CV880 aircraft on the contract delivery dates that are set forth on page 52, I would not have chosen any later date than May 15th for the commencement of revenue service.

Q. Would you explain why, please?

A. TWA would have received its first CV880 aircraft in November 1959 and prior to May 1st, TWA would have received a total of seven CV880 aircraft.

Delta received its first CV880 aircraft, I believe it was in February 1960 and it commenced revenue service on May 15, 1960.

TWA would have had a CV880 aircraft on hand longer than Delta. It would have had quite a sufficient number of aircraft on hand to have commenced revenue service, and therefore I believe it is perfectly reasonable to assume TWA would have commenced revenue service with this fleet certainly no later than May 15, 1960.

Wemple—Redirect

Q. Earlier this week, Mr. Wemple, Mr. Hayes asked you a number of questions on Chapter V of your report in the course of which you stated that for the table at the top of page 70 of your report you had made a computation of revenues based on average piston aircraft, while in your expense calculations you had based [Tr. 6191] calculations of expense for flying operations and maintenance on the historical expense incurred by TWA in connection with the 1049G piston aircraft.

Do you recall your testimony on that subject?

A. I do.

Q. Have you since at my request made a computation to determine what the effect would be on your estimates if you had based your estimates of expenses for Chapter V on an average of TWA's piston aircraft as you based the table at the top of page 70 which deals with revenues?

A. I have.

Q. Do you have the results of that computation with you?

A. I do.

Mr. Tenney: I ask that there be marked as TWA Exhibit 45 for identification two sheets, constituting photocopies of pages 71 and 72 of the Volume I of Mr. Wemple's report, TWA Exhibit 4C, marked to indicate certain changes, and also that there be marked as TWA Exhibit 45A for identification a series of work papers and other changed pages from his report establishing the details of the calculations leading up to TWA Exhibit 45 for identification.

[Tr. 6192] * * * Q. In this instance, Mr. Wemple, I notice that there is no summary sheet.

Would you, therefore, explain a little more fully what this TWA Exhibit 45 for identification shows?

Wemple—Redirect

A. For this TWA Exhibit 45, for each of the years 1960 through 1963, we made an alternative calculation of changes in flying operations and maintenance expense that would have been the result of TWA having received a fleet of thirty rather than twenty CV880 aircraft which is the basic subject of Chapter V.

These alternative calculations used TWA's historical total expense for the operation of all piston aircraft in each of those years. And it is this expense for all piston aircraft on which we—correction. And it is this historical expense of all piston aircraft that we used for our application of ratios to calculate changes in expense that would have been the result for [Tr. 6193] Chapter V.

The revised expense calculations are set forth on pages 71 and 72 which have been marked and printed, and are Exhibit 45.

The results are an increase in expense in 1960 from 10.8 to 11.6 million.

In 1961, from 21.6 to 22.8 million.

In 1962, from 21.0 to 21.7 million.

In 1963, from 14.1 to 14.9 million.

Q. What is the result of that change on your computations of improvement in gain or loss from operations?

A. If my quick arithmetic is correct, it is a total increase of \$3½ million.

Q. A total effect in what direction?

A. Increase in expenses.

Q. What result does that have on the change in gain or loss from operations?

A. That would have a corresponding amount of effect. It would—if applied, it would reduce the calculated improvement in gain from operations set forth for Chapter V by \$3½ million.

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Wemple—Redirect

[Tr. 6194] * * * Q. Mr. Wemple, do you have available a copy of Defendants' Exhibit 15? That is the Coverdale & Colpitts report dated June 26, 1959.

In the course of your testimony on this report in answer to questions by Mr. Hayes you stated in substance that in your opinion a reading of this report would lead the reader to the conclusion that TWA would require additional jet aircraft to keep up with its competitors.

I would like you to briefly examine Defendants' Exhibit 15 and point out the portions of that report which lead you to that conclusion.

Mr. Hayes: I object to this, Mr. Brownell. The report speaks for itself. We can all read it. We can all draw our own conclusions as to what the report says.

The Special Master: Are you going to ask him to comment on it or just—

Mr. Tenney: I would like him to go through the report and comment on those portions of the [Tr. 6195] report that indicate TWA's need for jet aircraft.

Mr. Hayes: I press my objection, Mr. Brownell.

The Special Master: I will allow the answer, which I trust will be rather brief.

Mr. Hayes: I am sorry.

The Special Master: Which I trust will be rather brief.

A. There are three general classes of statements in the report.

The first class I would like to refer to relates to the advantages of a jet aircraft over a piston aircraft which, of course, are well known.

Wemple—Redirect

Page 2, it points out the speed difference.

Page 4, it points out that jet aircraft are more comfortable and attractive than piston aircraft.

Page 33, it points out that TWA and American had been averaging 90 per cent load factor during the initial months of operation with their new jet aircraft.

There is another series of statements which point up that with the fleet of 45 jet aircraft that were the basis for this particular study and forecast, TWA was going to be obliged to operate a number of piston aircraft on a number of important segments and that piston [Tr. 6196] aircraft by TWA would be operated against competition by other airlines' superior more modern aircraft, and that TWA was going to have to limit its schedules which it was operating with jet aircraft or with any kind of aircraft.

Page 3 points out that TWA expected to still have 72 piston aircraft in its fleets.

Page 6 points out that TWA would be operating a 1049G piston aircraft in direct competition with American's Lockheed Electra.

Page 10A, the Domestic Division, flight segments in their total schedule pattern, 126 would be operated with jet aircraft, and a total of 274 would still have to be operated with piston aircraft.

Those piston aircraft segments would be—include Pittsburgh to Chicago service, Cincinnati to Detroit service, Pittsburgh to St. Louis, New York to Columbus, et cetera.

That in the International Division, TWA was going to operate its beyond the gateway system—correction—its beyond the gateway service with piston aircraft.

And page 28, it points out that American would be using jet and turboprop aircraft on a number of [Tr. 6197] intermediate and short-range segments which TWA would have to be operating with piston aircraft.

Wemple—Redirect

It also points out at a page which I seem to have trouble putting my hand on at the moment that TWA's International Division—it is page 15—service would be reduced during the summer peak from 43 flights per week down to 36 flights per week.

It points out that those essentially will be jet-aircraft flights, but TWA is having to eliminate non-stop direct service between New York and Rome, between New York and Frankfurt, between Boston and Paris, between Chicago and London, et cetera.

The other kinds of statements that are set forth in here are that TWA with 45 jet aircraft will not be nearly as well equipped with jet aircraft as its principal competitors were then scheduled to be.

For example, TWA would have 37 jet aircraft for Domestic Division service, American would have 75 jets, and 33 turboprops, the Lockheed Electra. United at that time was scheduled to have 58 jets as against TWA's 37.

In number of seats as set forth on page 30, TWA would be able to offer 3537 jet seats—this is a daily service proposition—against American's 8000 and United's [Tr. 6198] 7700.

In the International Division, TWA would have eight jet aircraft available. It lists here that Pan American would have seventeen available.

Actually, this list prepared in this report is incorrect, because it did not reflect the six additional B331 aircraft that were diverted from TWA to Pan American.

BOAC, another principal competitor, was expected to have 25 jet aircraft against TWA's eight.

Those are the principal elements of the report which support my statement that I made the other day.

Wemple—Redirect

Q. Were you ever requested by TWA or Tool Company during the period in the early part of 1959 leading up to the preparation of this report which has been marked Defendants' Exhibit 15—to repeat, were you ever requested by TWA or Tool Company to express an opinion as to whether or not the 45 jet aircraft on order for TWA with which this report deals was too many or too few or the right number for TWA?

A. We never received that request.

Q. Were you ever requested by TWA or Tool Company to conduct an analysis of the relative advantages of this 45-plane fleet as against a 63-plane fleet for TWA?

A. We were not.

[Tr. 6199] Q. Did you ever state an opinion to TWA or Tool Company that a 45-plane fleet would be better for TWA than a 63-plane fleet?

A. We did not.

Q. Mr. Wemple, I show you Defendants' Exhibit 64 which is this rather bad photocopy of a letter addressed to Mr. Charles S. Thomas, president of Trans World Airways, Inc. and dated May 6, 1959, which I believe you testified you participated in the preparation of.

A. That is correct.

Q. In that letter, you state that you have made certain studies in the second paragraph, Mr. Wemple.

Is Defendants' Exhibit 15 the report that you have just gone over a report on the studies which are referred to in this letter of May 6th?

A. It is.

Q. In what connection was the May 6th letter to Mr. Thomas prepared?

A. It was prepared at his request.

Q. Did he explain why he wished the letter?

Wemple—Redirect

A. I did not learn or know of any explanation at that time as to why he wished the letter.

Q. You express the opinion in the May 6th letter that the jet fleet listed above which is the 45 planes [Tr. 6200] listed in the table just above which is to be delivered to TWA by the end of 1960 provided a fleet of aircraft in types and numbers adequate for a sound economic operation.

What did you intend to convey to the reader in that statement of opinion?

Mr. Hayes: I object to this what he intended to convey. We have his document here as to what he said. What is his intention is not evidentiary at all.

Q. What did you mean by that statement?

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[Tr. 6201] * * * A. I believe this letter was written as a perfectly straightforward statement of our opinion at that time of May 6th, which is namely that the studies had shown that TWA could expect in the year 1961 a sound economic operation with those aircraft.

Q. Did you mean to suggest that TWA would be better with the numbers of jet aircraft set forth than with a larger or smaller number?

Mr. Hayes: I object to this.

The Special Master: He has already testified that he has never given any opinion on that subject.

Q. Is your prior answer that you had never stated any opinion to TWA as to whether or not the 45-plane fleet was too large, too small or the right number in any way affected by this letter?

Wemple—Redirect

Mr. Hayes: I object to this. It is the [Tr. 6202] same business again.

The Special Master: It seems harmless to me. I will allow the answer. It seems a little repetitious but there is no harm.

The Witness: May I have the question again?
(The question was read.)

A. No.

Q. In Defendants' Exhibit 15, Mr. Wemple, in which you commented just now, you set forth some forecasts as to jet and turboprop aircraft which would be on hand for various airlines in the year 1961.

Have you prepared at my request a list of the aircraft, jet and turboprop aircraft, which TWA and its principal competitors actually did have on hand over the period from shortly prior to that time up to as recently as practicable?

A. I have.

Q. May I have it, please?

A. Yes.

Mr. Tenney: I ask that there be marked as TWA Exhibit 46 for identification a table headed "Jet and Turboprop Aircraft On Hand For TWA And Principal Competitors, 1958-1966."

[Tr. 6203] * * * Q. Would you just explain how this table is put together and what the meaning of the various entries are? Not in any detail, just generally, Mr. Wemple.

A. We went to the sources which are listed at the bottom of the page and tabulated the number of aircraft reported for these various airlines as on hand at six-month intervals from 1958 through 1966.

We have separated the turboprops from the jets because they have certain different characteristics, although, in my

Wemple—Redirect

opinion, are vastly superior to the piston aircraft operated—correction—to the piston aircraft which TWA and most airlines operated.

The NA items on the right for the June 30th period are simply that the ICAO statistics do not show June 30th aircraft fleets on hand.

Q. Under Trans World Airlines, that column, does that include all the airplanes that TWA—all the jet aircraft that TWA had for both domestic use and international use?

A. And cargo use.

[Tr. 6204] Q. So that not all of them would have been available at the same time at any rate either domestically or internationally, is that correct?

A. They would have been divided between the Domestic and the International Divisions.

The history of TWA's division for the years 1959 through 1963 is set forth in Volume I of our report.

The Special Master: What page?

The Witness: Exhibit B.

Correction. Did I say Volume I? I meant to say Volume IV, Exhibit B.

Mr. Tenney: I offer this in evidence subject to the same ground rules.

Mr. Hayes: Subject to our general objections which have not been ruled on.

The Special Master: So received.

(TWA Exhibit 46 for identification, received in evidence, as of this date.)

Q. Turning to another subject, there was a good deal of testimony, Mr. Wemple, in the course of Mr. Hayes' examination about the use by TWA of four Boeing 720B jet aircraft which it leased for a period in 1961 and 1962?

Wemple—Redirect

Do you recall that testimony in general?

[Tr. 6205] A. I do.

Q. Would you turn to the chart on page 58 of your report, Exhibit 4C, Volume I?

A. I have it. Page 58, you said?

Q. Yes.

Will you explain what this chart shows as to the use by TWA B720 aircraft at the time to which this chart relates?

A. This page 58 is developed from information in TWA's employee timetables, and it lists all of the service that TWA operated on a daily basis westbound between various pairs of cities in the United States.

TWA offered other service than with the CV880 aircraft between these pairs of cities, and that other service is tabulated there by type of plane.

There was a very small amount of service between these 30 pairs of cities with the B720 aircraft, namely, three flight segments out of a grand total of 87?

Mr. Hayes: A grand total of 87.

The Witness: 87 flight segments on the righthand side of page 58, that is correct. Do you see it?

The Special Master: 67 were jets?

The Witness: 67 were jets, 87 grand total.

[Tr. 6206] Mr. Hayes: I will defer my questioning.

Q. How did you select these 30 pairs of cities, Mr. Wemple?

A. As I have mentioned these were pairs of cities that were—correction.

As I have mentioned, this is the entire daily westbound service that TWA offered in the March 1962 schedule with

Wemple—Redirect

the Convair 880 aircraft, and that Convair 880 aircraft schedule provided service for these 30 pairs of cities.

Q. On page 68 of your report there is another chart. What does it show, Mr. Wemple?

A. Page 68, did you say?

Q. Yes.

A. It shows the pairs of cities that were served daily westbound by Convair 880 service by TWA in October 1963. There were a total of 36 pairs of cities served in that particular flight schedule pattern.

Q. Do you know how many pairs of cities are included in that table on page 68 that are not included in the table on page 58?

A. I think it is 13, approximately 13.

Q. Have you at my request determined how these [Tr. 6207] additional pairs, these 13 additional pairs of cities were serviced by TWA in March of 1962 which is the time to which your table on page 58 refers?

A. I have determined the amount of jet aircraft service that TWA offered in March 1962 between these 13 pairs of cities.

Q. Do you have a table showing the results of that?

A. I do.

Mr. Tenney: I ask that there be marked as TWA Exhibit 47 for identification a table headed "Types of Jet Aircraft used by TWA in March 1962, for Daily Westbound Service for the Pairs of Cities Listed on Page 68 but are not Listed on Page 58 of the C & C Report Dated May 2, 1966."

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Q. What does TWA Exhibit 47 for identification, Mr. Wemple, show as to service provided by the B720 aircraft?

A. It shows that there was no service provided by B720 aircraft for these 13 pairs of cities.

Wemple—Redirect

[Tr. 6208] Q. Taking together the information shown in the tables on pages 58 and 68 of your report and in TWA Exhibit 47 for identification, Mr. Wemple, do you have any conclusion as to the relationship between the B720 jet and the additional CV880s in TWA's historical schedule planning?

A. Yes, my conclusion is that there was very little use of the B720 aircraft on the part of TWA's Domestic Division service that was operated with CV880 aircraft.

Mr. Tenney: I offer TWA Exhibit 47 in evidence subject to the objections, the same group of objections.

Mr. Hayes: Subject to the outstanding objections to the whole report.

The Special Master: Received in evidence.

(TWA Exhibit 47 for identification, received in evidence, as of this date.)

Q. Mr. Wemple, are there any statistics kept that you are familiar with as to break even load factors?

A. Yes, there are.

Q. What kind of statistics are there?

A. The CAB publishes a break even load factor for airlines by division on an annual basis.

[Tr. 6209] Q. Have you at my request prepared a table of certain information from those statistics?

A. I have.

Q. Will you show it to me, please?

A. Yes.

Mr. Tenney: I ask that there be marked as TWA Exhibit 48 for identification a table headed "Break Even Passenger Load Factors Scheduled Service 1958-1963."

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Wemple—Redirect

Q. Mr. Wemple, do you consider these figures as to break even load factors from CAB reports to be reliable figures?

A. Well, they certainly are reliable figures of what the CAB calculates as the "Break Even Passenger Load Factor" for various lines.

Beyond that, I view them as a very general guide to the operating profit versus load factor for an individual airline division, but certainly not a precise measure of that relationship.

Mr. Tenney: I offer TWA Exhibit 48 in evidence, subject to the same general objections [Tr. 6210] that Mr. Hayes has alluded to.

Mr. Hayes: Subject to our objections to the whole report.

The Special Master: So received.

(TWA Exhibit 48 for identification, received in evidence, as of this date.)

Q. Turning to TWA Exhibit 4B, Mr. Wemple, which is your comparative profit study—

A. I have it.

Q. —Mr. Hayes asked you just yesterday a Number of questions on this report as well as a number of questions at the beginning of the examination.

Among other things I believe you testified that this study compared operating profit and did not take into consideration net profits or any item that went into net profits but was not considered in operating profits, is that generally correct?

Do you recall your testimony on that generally?

A. Yes, as I recall, I said that the figures beyond operating profit that get into the net income or net profit calculation were not included in this particular report.

Wemple—Redirect

Q. What kind of thing is eliminated by that approach? What sort of thing are we talking about that is eliminated?

[Tr. 6211] A. Interest on debt, income from non-airline operations such as Pan American's International Hotels Division, taxes, income taxes are not—are thereby excluded from consideration in this particular report which is Exhibit 4B.

Q. You explained in the course of your testimony that the comparability of route structure I think you said broadly defined was a principal consideration in your determination of the most comparable airlines for purposes of the study which is reported on in TWA Exhibit 4B.

Will you state again what comparisons you consider particularly significant under this broad heading of route structure?

A. Yes.

The cities that were served by TWA and the other airlines, and the service between pairs of cities by TWA and the other airlines, and the general area served, for instance, the Baltimore-Washington area which was discussed yesterday.

Q. In the course of your testimony, you stated at one point, Mr. Wemple, that you had at one time made a quantitative study of traffic that certain airlines carried, do you recall that?

[Tr. 6212] A. I do.

Q. You also testified, I believe, that that was no longer available?

A. That is correct.

Q. What was the source of the material that you had included in that study?

A. Much of it came from CAB publications and as I recall some of it came from annual reports. I think those are the principal sources of the information that we had originally used for that general study.

Wemple—Redirect

Q. Have you since at my request—

A. Excuse me. Also, airline guides, timetables.

Q. Have you since at my request, Mr. Wemple, consulted those sources and prepared a general similar study?

A. Well, I have reviewed certain CAB statistics to assemble data on traffic by American and TWA domestic and by Pan American Atlantic and TWA international.

Q. Do you have a copy of the results of that?

A. I do.

Mr. Tenney: I ask that they be marked as TWA Exhibit 49 for identification—

The Witness: Here are the results of the analysis to show the comparability of traffic [Tr. 6213] statistics for TWA international and Pan American Atlantic for the period 1959 through 1965.

Mr. Tenney: I ask that this be marked TWA Exhibit 49A for identification, a—

The Witness: May I also suggest that you include in A the statistics I have on the comparability of traffic for American Airlines and TWA domestic.

Mr. Tenney: I ask that there be marked as Exhibit 49A for identification three spread sheets headed respectively "Passenger Originations by TWA International and PAA Atlantic Divisions, 1959 to 1965," "Passenger Originations by TWA Domestic Division and American Airlines, 1959 to 1965," and "Revenue Passenger Miles, TWA Domestic Division and American Airlines, 1959 to 1965."

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Q. Do you have similar results with respect to United Airlines?

A. At your request I assembled similar traffic statistics for United Airlines and TWA for the same period.

Wemple—Redirect

[Tr. 6214] Mr. Tenney: I ask that there be marked as TWA Exhibit 49B for identification this sheet which Mr. Wemple just handed me constituting a spread sheet headed "Passenger Originations by TWA Domestic Division and United Airlines 1959 to 1965."

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The Witness: Perhaps it would be well to point out that that is a combination of United and Capital's statistics, because United merged with Capital in the course of that period, and that obviously has a very large effect on those traffic statistics as well as other considerations for United.

By Mr. Tenney:

Q. I am not sure that the record is particularly clear as to what you were saying about TWA Exhibit 49B, Mr. Wemple.

Did you have a further explanation that you wanted to give?

A. Yes, I simply wanted to emphasize that the United traffic statistics reflect—correction—the United traffic statistics set forth there are a combination of [Tr. 6215] United and Capital for the early part of the period before the merger, and to also comment that insofar as a comparative profit study is concerned, I think it would have been most inappropriate to have selected United for that comparison because of this very major change that took place with the airline during the period which involved its merger with Capital.

Q. Apart, however, from the merger with Capital, will you comment as to what TWA Exhibits 49A and 49B show as to the comparability of the airlines involved insofar as

Wemple—Redirect

that comparability is concerned with the matters reflected in these tables?

A. The first comparison is between TWA international and Pan American Atlantic, and the table shows essentially that after the Pan American figures are adjusted to eliminate the Berlin and Bermuda services which are not transatlantic services as generally defined or as generally employed by our other discussions of transatlantic operations. But after that adjustment, the cities that are served by both airlines, that is, the common cities, have passenger originations which represent between 70.6 and 78.3 per cent of TWA's total International Division passenger originations and for Pan American the range is from a low of 66.3 in 1964 to a high of 88.8 in 1959.

[Tr. 6216] So that these cities which are served by both airlines represent the bulk of both airline division's traffic.

The domestic comparison is—I have two of them. One is on the basis of passenger originations which shows that the passengers for both TWA and American at the cities which they both serve runs approximately 80 per cent of the total passenger originations of both airlines throughout the period.

Now, for the domestic operation, we have another statistic available, and that is revenue passenger miles between pairs of cities as compiled by the CAB.

Now, this has to be set up by pairs of cities, and we selected the 75—correction—we selected the 75 pairs of cities which TWA serves which provide over 80 per cent of TWA's total revenue passenger miles.

Now, American Airlines serves many of those same 75 pairs of cities, and the service that American Airlines—correction—and the traffic that American Airlines obtained for those same 75 pairs of cities throughout this entire

Wemple—Redirect

period runs about between 43 and 46 per cent of American Airlines' total business.

Now, the United Airlines comparison on a passenger boarding, whereas for the cities served by [Tr. 6217] both TWA and American the passenger boardings represent about 80 per cent of each airlines' total passenger boardings, United's passenger boardings for those same—for the cities that are common with TWA represents only about 60 to 65 per cent of United's total boardings.

On the traffic statistics which are revenue passenger miles, again United—the United-Capital combination is lower than the American comparison. The American figure is about 45 per cent of American's total revenue passenger miles.

The United-Capital figure is about 35 per cent of United's total revenue passenger miles.

Q. What do you conclude from that as to the relative comparability of the United and American to TWA's Domestic Division?

A. That United is not the most comparable airline. American is.

Mr. Tenney: I offer TWA Exhibits 49A and 49B in evidence subject to the same objections that Mr. Hayes has referred to.

The Special Master: So received.

(TWA Exhibits 49A and 49B for identification, received in evidence, as of this date.)

Q. On the map which appears as Exhibit B to TWA [Tr. 6218] Exhibit 4B, you testified that this was taken from the maps published by the airlines in the Airline Guide for a particular month, that is, March 1964.

Would you explain why you chose this source from which to draw a map comparing route structures?

Wemple—Redirect

A. We found it completely impractical to prepare a map for inclusion in this report that would be of manageable size and would show the entire official route structure of each airline.

Furthermore, in my opinion, it would have been misleading.

We, therefore, turned to the Official Airline Guide as demonstration of what each airline thought were their most important routes to feature in a map.

Q. Do you know whether there are other routes in which TWA and American are in direct competition which were not shown as direct routes on those maps?

A. There are.

Q. Would you name some of them?

A. Yes, the outstanding omission is New York to Los Angeles which American did not choose to serve—to show as a through-service.

There is also New York to Chicago which for some reason American did not choose to show on its map.

[Tr. 6219] Q. If they had been shown on those maps in the Airline Guides which were your source, how would they have been represented on your Exhibit B?

A. A black line.

Mr. Tenney: Mr. Brownell, I have no further questions.

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[Tr. 6246] . . . Q. It is just not clear to me why for two years you used the upper line here which is line 19 on page 218 of the Handbook and for the remaining three years you use line 20.

A. I would like to have used line 20. Those data did not exist in CAB form for individual cities for the two preceding years.

Wemple—Recross

The Special Master: So that you came out with a result that you thought was the most accurate estimate you could get from CAB sources?

The Witness: That's right. It is a roundhouse approximation. No question.

Q. But there is a mixture of peaches and pears here, is there not?

A. There is a mixture.

Q. You gave some testimony with respect to charter revenue and I think what you said in substance was that even though the charter revenue dropped from year to year—I think there was an increase in one year, if I recall correctly—you are just assuming that with the additional planes and flights and so on there would [Tr. 6247] be a continuation each year of the same percentage, whatever it was?

A. I thought we were talking about percentage of charter passengers, rather than revenue, this morning.

Q. Whatever it was, charter passengers.

A. And my statement was, yes, that with the availability of extra aircraft we assumed that TWA would have handled a proportionate percentage of additional charter traffic.

Q. That the percentage would be exactly the same as it historically was for the year?

A. That is correct.

Q. And this is pure assumption on your part?

A. That is correct. This was our judgment of what was a reasonable assumption to do.

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[Tr. 6660] * * * Mr. Ordovery: The purpose of this session today is to mark for identification or in evidence as the particular case may be certain docu-

Wemple—Recross

ments relating to the testimony of Mr. Edward L. Wemple, which has heretofore been completed in this damage hearing.

This session is being held pursuant to an agreement of counsel made while Mr. Wemple was on the stand. It is being done to facilitate the marking of these documents and the agreement at the time was made so that Mr. Wemple's examination would not be interrupted by the necessity for obtaining and marking these documents.

Pursuant to the suggestion of the Special [Tr. 6661] Master noted at page 6254 of the transcript, Mr. Wemple has prepared TWA Exhibit 46A. This exhibit has been furnished to the Special Master and counsel and subject to the general objections of the defendants previously made and pursuant to the agreement of counsel for the defendants noted in their letter of March 16, 1967, I hereby offer TWA 46A in evidence.

Mr. Wier: Counsel for defendants has no objection to the receipt of TWA 46A in evidence subject, of course, to our objections to Mr. Wemple's testimony in general and further subject to the specific provisions included in our letter of March 16, 1967 to the Hon. Herbert Brownell, copies to Dudley B. Tenney, Esq.

(Four-page document; the first page of which is headed "TWA v. Jet and Turboprop Aircraft Year End Inventory, 1958-1965 For TWA and Principal Competitors and Additional Allocation of TWA's Jet Aircraft," marked TWA Exhibit 46A in evidence, as of this date.)

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Wemple—Rebuttal

[Tr. 10,638] * * * Mr. Tenney: As our next rebuttal witness, I will call Mr. E. L. Wemple, who has appeared before in this proceeding, and I do not think, therefore, will have to be resworn.

Mr. Perkins: I agree.

EDWARD L. WEMPLE, recalled as a witness, resumed the stand and testified further as follows:

Direct examination by Mr. Tenney:

Q. Mr. Wemple, are you familiar with the testimony that has been given by Mr. Nathan Simat in this proceeding?

A. Yes, I have read Mr. Simat's reports, his supplemental report and I believe I was present during most of his testimony on cross-examination.

Q. As you know, Mr. Simat has in his prepared reports and also in his oral testimony, expressed strong disagreement with the testimony which you gave earlier in this proceeding.

[Tr. 10,639] Do you wish to change the estimates and the opinion that you have expressed previously in any way as a result of having heard Mr. Simat's opinions?

A. No, I do not.

Q. In the report which Mr. Simat presented last year, which was marked Defendant's Exhibit 271, in Part III he states his opinion as to "certain fundamental errors in Mr. Wemple's methodology."

Commencing on page III-4 there are a series of four numbered paragraphs which purport to describe these so-called errors in your methodology. They are elaborated on elsewhere in that report.

Wemple—Rebuttal

I would like to direct your attention to the so-called fundamental error described on pages III-4, as consisting of your use of "the same average load factors," for estimating domestic operations as those which were experienced historically.

I will also remind you that this statement of so-called error is also referred to, among other places, in Part C of Vol. B at page 1 of which it is stated:

"Mr. Wemple's assumption presupposes that TWA could introduce jet capacity into the market in unlimited quantity without suffering a decrease in average jet load factors."

[Tr. 10,640] Do you believe, Mr. Wemple, that capacity could be added in unlimited quantity without affecting load factors?

A. No, I do not and none of my estimates are based on a premise of adding unlimited quantity into the market.

Q. Would you explain that, please?

Mr. Hayes: May I interpose here? It seems this is not at all rebuttal testimony. Mr. Wemple is not now going all over again his original report.

The Special Master: So far, you are right. I will let it go a little while until I see the trend.

A. I have an exhibit prepared here to show what historically happened in TWA's scheduling during the 1959 to 1963 period when TWA introduced jets into the operations.

Mr. Tenney: Just a moment, Mr. Wemple. I ask that this sheet, which is headed "TWA v. Hughes. Departures By Fleet Segment Length, Piston and Jet Aircraft 1959-1963" be marked as TWA Exhibit 443 for identification.

Wemple—Rebuttal

[Tr. 10,641] By Mr. Tenney:

Q. Is the document which has been marked as TWA 443 for identification, the exhibit you have just been referring to?

A. Yes.

Q. Please proceed.

A. This exhibit uses data on departures of piston and jet aircraft, taken from Mr. Simat's working paper, Vol. B printout, identified as "Program Output Listing 1." It groups departures for the last month of each quarter within a year by flight segment length.

I should like, first, to call your attention to the phenomena or the development that is shown in the departures of 1501 miles and longer. Those are the three right-hand groups which are listed ahead of the total.

In the year 1959, in the 1500 to 2000-mile segment length, for example, there were 1973 departures noted.

By the year 1963, there were none with piston aircraft.

For the next longer segment length there were 645 piston departures in the year 1959 and by the year 1963 this was down to 105.

In the next longer one there were 141 piston [Tr. 10,642] departures in 1959 and this sheet shows a reduction to 87 for the year 1963.

We actually couldn't find those in the examination we made of the flight schedules. However, my point is still the same, and that is that this represents a replacement of piston aircraft departures with jet aircraft departures.

The second phenomena that is shown in this schedule analysis can also be illustrated by the same flight segment length groupings.

Wemple—Rebuttal

In 1959, the 1500 to 2000-mile segments show 2494 departures and by 1963 that number has increased to 3355 departures.

The next two longer segment length groups show virtually a doubling of the number of departures between 1959 and 1963.

The Special Master: This is all domestic, isn't it?

The Witness: Yes. This illustrates the second scheduled change development, namely, a net increase in number of departures in the longer segment lengths.

The third development which I want to point out is best illustrated by the left hand column, which are [Tr. 10,643] the departures of segment lengths less than 300 miles long.

In 1959, there were 40,691 such departures recorded for that segment length in Mr. Simat's analysis. By 1963, there were only 25,000 such departures, a reduction of 15,000 in total number of departures of the short segment lengths.

There were, in 1963, 5470 piston—I am sorry—5470 jet departures and one must assume that those represent replacements of piston departures in the early years. But there was absolute elimination of 15,000 departures.

This, to my knowledge, was a management decision to eliminate the short stage length departures operated with piston aircraft, because they were not profitable. It had nothing whatsoever to do with the advent of the long-range jet aircraft, which is the subject of our analysis and estimates.

In my estimates, insofar as replacement of piston service is concerned, over 60 per cent of the jet mile-

Wemple—Rebuttal

age that TWA would have operated with the earlier and additional jet aircraft, would have been for direct replacement of piston service.

I have another schedule developed to show [Tr. 10,644] the magnitude of the net increase in jet service that would have occurred in accordance with my estimates.

Mr. Tenney: I ask that this sheet which is headed "TWA v. Hughes. Total Available Seat Miles Operated, Domestic Scheduled Service Only. TWA, UAL and AAL," be marked as TWA Exhibit 444 for identification.

Mr. Perkins: This was revised from the ones we received on Friday.

The Witness: This is revised from the paper that was distributed ahead of time to a very minor degree in the TWA estimated additional seat miles for the years 1959 and 1960 and 1961.

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By Mr. Tenney:

Q. Mr. Wemple, before you go on to discuss this exhibit, perhaps you should tell us how we can tell this from the earlier incorrect one that was distributed previously.

Mr. Hayes: We never received an earlier incorrect one.

Mr. Cayo: Yes, we did. We never [Tr. 10,645] received the correction.

A. The revised edition has under the TWA, estimated additional seat miles for the year 1959 the figure 105.

The next figure is 910 and the next figure is 1018.

Wemple—Rebuttal

Q. Will you go ahead, please?

A. This exhibit shows the amount of net additional jet miles which I estimate TWA would have operated with the earlier and additional jet aircraft, as a percentage of the historical seat miles which TWA, United and American operated in each year.

I have selected United and American, because, of course, they serve many of the same markets that TWA does and I believe this gives the best picture of the overall magnitude of the estimated additional seat miles in the total market, which was served by TWA.

The percentages are shown in the right-hand side of the upper part of this table. They are, of course, quite small, ranging from .5 per cent to 3.7 per cent.

Mr. Perkins: I think Mr. Hayes will join me in noting a continuing objection to this whole line of testimony, on the ground it doesn't appear to be rebuttal testimony at all, but a further support for Mr. Wemple's variation of—I don't know [Tr. 10,646] what it is—Mr. Wemple's original testimony.

The Special Master: You may proceed.

A. (continuing) The lower part of this table shows the additional TWA seat miles which I estimated as a percentage of TWA's historical seat miles and there the percentages start as 1.6. The highest in any year is 13.6.

I believe that these percentages show that my estimated additional jet seat miles cannot possibly be characterized as introducing jet capacity into a market in unlimited quantity.

Q. In your opinion, what effect would the addition of this amount of additional service have been on individual markets served by TWA?

A. I made that kind of an analysis for five of TWA's most important markets. These were tables identified as

Wemple—Rebuttal

31 through 36. The one on the top covers New York to Chicago schedules by TWA in June 1960.

Mr. Tenney: So that we can identify for the record what you are talking about, I ask that six sheets of which the first is headed "TWA v. Hughes. New York-Chicago Nonstop Jet Flights, Actual, June 1960," be marked as TWA Exhibit 445 for identification.

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[Tr. 10,647] * * * By Mr. Tenney:

Q. Mr. Wemple, I believe that TWA Exhibit 445 for identification is the series of tables that you were just now referring to.

A. It is.

Q. I understand that you made some corrections in your earlier version of these which were originally distributed to counsel for defendants. May I ask whether you were able to send them copies of those corrections?

A. To my knowledge, they did not get copies of the corrections. The changes—

Mr. Hayes: We did get some corrections. You mean corrections of the corrections?

Mr. Tenney: No. I state for the record that I am advised that the corrected versions were distributed to defendants, but particularly since there are two versions now, can you tell us how we can be sure that we are dealing with the correct one?

Wemple—Rebuttal.

The Witness: The second New York to Chicago sheet, the correct one, in the left-hand column, under "Flight No." the eighth figure, in the [Tr. 10,648] corrected version, has Flight No. 90.

Mr. Perkins: Instead of what?

The Witness: 800-B.

By Mr. Tenney:

Q. Mr. Wemple, you were commencing to make a statement with respect to this. You may proceed.

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The Witness: The first sheet lists non-stop jet flights as operated by TWA, American and United between New York and Chicago in June 1960.

You will note that TWA operated only one jet flight in each direction out of a total of six of all airlines eastbound and seven westbound.

I point out that in addition to these jet [Tr. 10,649] flights, of course, TWA operated seven piston flights in each direction, and American, which was the major factor in this particular market, operated 14 eastbound and 15 westbound, most of which were Electra flights.

Turning to the second sheet in this package, I have inserted into the June 1960 listing of nonstop jet flights, additional flights, nonstop jets, which TWA was able to operate in July 1961. The additional flights are indicated with an "A" on the left-hand side of each of the two groups of columns.

In July 1961, TWA had approximately the number of jet aircraft that the assumptions would have given TWA in June 1960. So that we have simply moved forward the nonstop jet service TWA was able to

Wemple—Rebuttal

operate in July 1961 and presumably would have been able to operate in this particular market in June 1960.

These additional nonstop jet flights would have given TWA the very best competitive position of all the airlines in this market. It would have given them a much better competitive position, versus, for instance, American's, I think it was, eleven Electra flights in each direction.

[Tr. 10,650] TWA, with this arrangement, would have had seven jet flights.

The next sheet is New York to Los Angeles nonstop service. As it was operated by TWA in July 1960, plus the addition of the additional flights TWA was able to operate in this market in July 1961.

By Mr. Tenney:

Q. Mr. Wemple, I think you misspoke on the dates covered. Would you state those dates again?

A. I did misspeak. Thank you, Mr. Tenney.

This tabulation shows TWA and the other airlines' flights between New York and Los Angeles, nonstop, with jet aircraft, in June 1960.

I have added to the schedule the additional flight TWA was able—correction—that TWA did operate in July 1961, and the additional flights in each direction is identified with the "A" at the left side of each group of columns.

With this additional flight, TWA would have been able to operate as many nonstop jets between New York and Los Angeles as American did in June 1960 and this, in my opinion, would have improved TWA's competitive position in this particular market.

Wemple—Rebuttal

The next sheet is for the New York to San Francisco market and it shows the flights operated by TWA, American and United.

There were no additional flights operated by TWA in July 1961.

In June 1960, TWA operated three eastbound flights. So did American.

In 1960, TWA operated three westbound flights as against two for American and two for United.

The next tabulation deals with Chicago to Los Angeles service, in both directions.

Here we have an additional airline, Continental, which serves that market.

In July 1961 TWA operated two additional flights in this market and these are shown by the letter "A".

With the two additional flights in June 1960, TWA would have been able to match the number operated by both American and United in each direction in this market.

The last sheet covers the Chicago to San Francisco market and the July 1961 schedule for TWA would have given TWA two additional flights in each direction in this market. With those two additional flights, TWA would have had a total of three in each direction.

In June 1960, American operated three in one [Tr. 10,652] direction and four in the other direction. United operated four in both directions.

In conclusion, I believe these additions to these particular markets, as I have said in passing, would have materially improved TWA's competitive position.

Q. Have you made any examination to determine whether in such markets as these an increase in service offered has historically had a result on TWA's share of passenger traffic?

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Wemple—Rebuttal

[Tr. 10,655] • • • A. Yes, I have. I have prepared some charts to show TWA's share of each of these markets and TWA's share of non-stop flights operated in each of these markets, for the period 1959 through 1964.

Mr. Tenney: I ask that a series of charts five in number, of which the first is headed "New York-Chicago. TWA per cent of Non-Stop Jet Flights. TWA per cent of Passengers Carried. TWA Non-Stop Jet Flights per Day by Quarter, 1959-1964" be marked as TWA Exhibit 446 for identification.

Mr. Perkins: Would you note for the record that I have been advised that we have received no work papers which enable our experts to check the results of this exhibit. I think the pages there, the numbers 41 to 45 at the lower left hand corner and they certainly need more backup material in order to be able to check the accuracy [Tr. 10,656] of these exhibits.

The Witness: It had been my understanding that the work papers behind these had been made available to you during the last several days. My associate is making a call to see if we can clarify that point.

Mr. Perkins: Thank you.

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Q. Is TWA 446 for identification the study that you have just referred to, Mr. Wemple?

A. It is.

Q. In the light of the statement by Mr. Perkins as to work papers, perhaps it might be helpful if you simply said what types of work papers do lie behind these charts.

Wemple—Rebuttal

A. We have tabulations of numbers of TWA's per cent of the market for each quarter for 1960 through 1964, taken from the CAB competition studies.

Q. Are those the same CAB's competition studies that have been referred to frequently during the course of Mr. Simat's and Mr. Eichner's testimony?

[Tr. 10,657] A. They are. For the year 1959, we have copies of passenger traffic data submitted to the CAB by the airlines for these pairs of cities. That data was used by the CAB to develop the annual report on competition study for the year 1959 and copies of the basic data sheets are included in our work papers.

We have tabulated data taken from those airline sheets to calculate TWA's per cent passengers for each quarter.

We have tabulations of non-stop jet flights operated by the airlines serving these markets, that did operate jet flights, this is of course 1959 through 1964, each month during the period and then we have summarized those into quarterly per cents of non-stop jet flights for TWA.

Q. The particular compilations of information from the CAB competition study and from the official Airline Guide, have been retained by you?

A. They have been retained by us.

Q. And was that what you meant when you stated just now that it was your understanding that it had been available to counsel for defendants?

A. That is correct.

Q. Will you proceed with your explanation of [Tr. 10,658] TWA Exhibit 446, Mr. Wemple?

A. The first sheet which covers New York to Chicago, shows on the left hand side a dotted line representing TWA's per cent of passengers for each quarter of 1959 and for the first quarter of 1960, in a descending configuration. In other words, TWA's per cent of passengers in the New York to Chicago market as measured by the CAB competition studies, declined.

Wemple—Rebuttal

You will notice before that, that American started its service in November 1959, United started its service in January 1960. TWA did not start jet service until April 1960. When TWA entered that market with some jet service, TWA's per cent of the market revived and went upward.

The Special Master: When was that, you say?

The Witness: April 1960. Then, although TWA increased its number of jet flights in that market slightly during the year 1960, as shown by the solid line for TWA's per cent of non-stop jet flights in a descending configuration the other airlines increased their number of jet flights much more than TWA, so that TWA had a reducing percentage of non-stop jet flights and TWA's per cent [Tr. 10,659] of the traffic dropped in the fourth quarter of 1960.

Thereafter, in 1961, when the CV 880 came in and TWA was able to put many more jet flights in the New York-Chicago market, TWA's per cent of the non-stop jet flights increased and so did TWA's per cent of the traffic.

Thereafter, TWA's per cent of the passengers roughly fluctuates with TWA's per cent of the non-stop jet flights.

The New York to Los Angeles page shows the same general kind of picture. TWA was second into the market here in April 1959 and as it went into that market with non-stop jet service, its percentage of the market went up.

United came along in October 1959 and TWA's per cent of the market went down and thereafter there is general fluctuation of TWA's per cent of the market generally with TWA's per cent of the non-stop flights.

Wemple—Rebuttal

The next chart is New York to San Francisco, in which TWA was the first in the market with jet service, in March 1959, and TWA's per cent of the traffic rose to a very nice 58 per cent [Tr. 10,660] during the third quarter of 1959.

United came along in September and American in November with jet service and TWA's per cent of the market dropped.

Thereafter the per cent of the market and per cent passengers is traced across the page, in some degree of correlation.

The next chart is Chicago to Los Angeles and this is the same general pattern. I call your attention particularly to 1961 when, with the additional CV 880 aircraft that TWA got into service in that year, TWA was able to increase substantially its per cent of non-stop flights in this market in the third quarter of 1961 and its per cent of traffic went up substantially also.

The fourth chart is Chicago to San Francisco and it shows the same pattern. American was the first in this market and TWA's per cent of the market dropped when American introduced jet service and then came up when TWA introduced jet service in June of 1959 and again there is the same following of patterns of the two lines.

I believe these many instances of per cent of the market showing immediate response to per [Tr. 10,661] cent of jet flights, shows clearly that TWA could expect, in these competitive markets, that passenger traffic, additional passenger traffic, would come their way if they were able to increase the amount of jet service. They were able to operate in such competitive markets.

Wemple—Rebuttal

Q. Referring back to the passage from Mr. Simat's original report that I called your attention to before, he mentioned that you had used in your estimates historical average load factors. I believe you have in fact used in your estimates historical average load factors and specifically load factors for the jet fleets, that is, the type of jet fleet that you have made your estimates with respect to, is that correct generally?

A. That is correct.

Q. Will you explain why you have used that type of historical average jet load factor?

Mr. Hayes: It seems we are just going more deeply and more deeply into his original report with more justification for it. It seems to me that we should bring this to an end.

The Special Master: It was attacked in cross-examination and that is the reason I will allow it.

[Tr. 10,662] Mr. Hayes: I beg your pardon?

The Special Master: It was attacked basically in the cross-examination and therefore if he can shed any more light on it even though in redirect examination, I will allow it.

Mr. Hayes: It was attacked by me in my cross-examination of Mr. Wemple and Mr. Wemple went on redirect at that time and he had every opportunity to defend the method he used and insofar as he could defend it, we will assume that he has defended it.

The Special Master: It's a perfectly proper objection. I have no quarrel with your raising it at all but I think Mr. Simat put some frosting on your cake and he is now responding to the frosting.

Mr. Hayes: I am delighted that the cake is now more delectable.

Wemple—Rebuttal

Q. Can you answer my question?

The Witness: Please repeat the question.

Q. Will you explain why you have used the type of historical average load factors that you have used in your estimates?

A. I believe they are the best load factors to [Tr. 10,663] use for estimates for the equipment assumptions that we have been given.

To illustrate this, I have prepared this chart, which shows—

Mr. Hayes: What chart is this?

Mr. Tenney: I ask that this chart, headed "TWA v. Hughes, Domestic Division, Monthly Passenger Load Factors (Scheduled Passenger Service) for All Aircraft Types and Certain Jet Aircraft, 1959-1963" be marked as TWA Exhibit 447 for identification.

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Q. I believe, Mr. Wemple, you were starting to comment on this document that has now been marked as Exhibit 447 for identification. Would you continue with what you were about to say, please.

A. Yes. The solid line on this chart connects points which are the monthly load factors which TWA achieved for all aircraft combined throughout this period 1959 through 1963.

[Tr. 10,664] Mr. Hayes: May I interrupt? What is the word "hourly" supposed to indicate for that solid line?

The Witness: Mr. Hayes, I have no idea what the word "hourly" is doing there. It should be "average load factor."

Wemple—Rebuttal

Mr. Hayes: I am sorry for the interruption but I just didn't understand "hourly."

The Witness: The dotted lines are the monthly load factors recorded by the various fleets of jet aircraft as a new fleet was put into operation plus three months. I believe this chart shows that the new fleets shortly after their introduction fell into a monthly variation pattern that was very similar to the monthly variation pattern being experienced in TWA's overall average load factors.

The jets had their individual characteristic load factors, as illustrated, for example by the CV 880 jet fleet. It was put into operation in 1961 and recorded load factors which were higher than TWA's overall average load factor.

In 1963, when the jet fleet was increased in the middle of the year by roughly one-third from [Tr. 10,665] 20 to 26 aircraft, the load factor still maintained its characteristic position above the overall average of all aircraft.

Based on this, I selected each year's historical load factor as being the best load factor figure to use for our passenger mile calculations for these assumptions.

Q. Can you relate these selections that you have made as to load factors and the other comments that you have made in the course of your testimony just now, to each of the separate equipment assumptions that you have studied here?

A. The B-131 equipment assumption had to do with earlier receipt of those aircraft. So that it would have been possible to have operated additional B-131 plane miles in the first half of 1959. As shown clearly by the level of the

Wemple—Rebuttal

131 load factor points in 1959, jet seats were tremendously in demand at that time and I believe that additional flights operated in the first half of 1959 would also have been tremendously in demand.

For our calculation of additional B-131 passenger miles, I used a figure which I believe was 83 per cent annual average load factor, 83.1 per cent and as you can see by the chart, that understates, I believe, [Tr. 10,666] the number of additional passengers that would have been achieved with additional 131 miles in the early part of 1959.

The early receipt of B-331 jet aircraft is the same kind of an assumption, where it would have been possible for TWA to have operated a small amount of additional Domestic Division mileage with those intercontinental jet aircraft. That small amount of Domestic Division mileage would have come in the latter part of 1959 and the early part of 1960, when these jet seats were very much in demand.

The average load factors I used for those, were 83.1—this is historical—for 1959 and 64.5 for 1960.

As you look at this chart, comparing those figures with the dotted lines of what was actually achieved in those particular periods, I believe, again, that those load factors, if anything, understate the additional passengers that would have been achieved.

The next assumption has to do with the earlier receipt of CV 880 jet aircraft. As I mentioned before the CV 880 characteristically operated higher than TWA's average load factor. No doubt a result of being a smaller aircraft and the particular service to which TWA applied that aircraft.

[Tr. 10,667] With the earlier receipt of those aircraft there would have been additional CV 880 operation in 1960, which was a period in which relatively few jets were operated by domestic trunks and we have used historical figures on load factors of 68.6 for the CV 880 additional mileage

Wemple—Rebuttal

operated in 1960 and 65.5 for the additional mileage that would have been operated in 1961, during the first part and I think that as you look at this record of history, you will see that those historical selections are most conservative.

The assumption as to six additional B-331 aircraft would have given TWA additional jet mileage in the years 1960 through 1963. These are intercontinental aircraft primarily designed for international and primarily scheduled for international service.

There would have been a small amount of additional Domestic Division service that could have been operated with these 331 aircraft and I think it is most reasonable to assume that they would have been operated in the same schedule patterns and with the same results each year that the B-331s were operated each year.

The next assumption to which I wish to call your attention, has to do with the CV 880 jet aircraft, the assumption whereby TWA would have had a fleet of [Tr. 10,668] 30 rather than a fleet of 20. This would have given a substantial number of jet planes miles operated during the years 1960 through 1963 as a result of having these aircraft.

We made a special study of the schedules operated with the CV 880 aircraft and we found a remarkable consistency of schedule pattern throughout the period. This relatively uniform schedule pattern is also illustrated by average stage lengths for CV 880 aircraft as recorded by Mr. Simat.

For the year 1961 the figure was 821 miles. For the year 1963 the figure was 767 miles, which is 93 per cent of the first year's figure.

It was my finding that TWA was relatively uniform in its use of CV 880 aircraft throughout this period including the period when TWA's fleet was increased from 20 to 26 and therefore, I believe, it is most reasonable to

Wemple—Rebuttal

have selected TWA's historical load factors for CV 880 jet passenger mile calculations.

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[Tr. 10,669] . . . Q. Referring back, Mr. Wemple, to the so-called fundamental errors in your methodology which Mr. Simat testified to, one of them, he states at Page III-4 of [Tr. 10,670] his original report, consisted of your employment of what's called historical "equipment usage." The element of that which is expanded on more fully, most fully, I should say, is that you "inherently assume that the added jet and deleted piston flights would be at the same stage lengths as the average jet or piston flight actually operated each year," instead of what is called on several occasions in Mr. Simat's report, "marginal stage lengths." Will you comment on that, please?

Mr. Hayes: I would like the record to show, Mr. Brownell, that all of these questions are directed to the defense of Mr. Wemple's original report we have an objection to.

The Special Master: All right.

A. It is fundamental to my answer to your question that we consider the amount of increase which I estimate these equipment assumptions would have meant to TWA's plane miles or schedule of operations.

Q. Have you made a tabulation of that increase?

A. I have.

Mr. Tenney: I ask that this sheet headed "TWA v. Hughes, Revenue Plane Miles, Domestic Scheduled Service Only, TWA, All Aircraft Types, [Tr. 10,671] 1959-1963," be marked as TWA Exhibit 448 for identification. This, I am advised, also has been

Wemple—Rebuttal

revised from the version furnished to the defendants on Friday.

I understand that the revision has been supplied to you previously and I further understand that the difference is a correction of the label of the two columns to correctly identify the figures as plane miles.

The original incorrect identification was seat miles.

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[Tr. 10,672] Q. Is TWA Exhibit 448 for identification, the tabulation you just now referred to?

A. Yes, it is, and the significant thing on that tabulation is that our estimated additional plane miles that TWA would have been able to operate with the jet aircraft amount to less than a 10 per cent increase in any year in the total plane miles that TWA did operate.

The various equipment assumptions would, of course, have had a different impact on the scheduling of the additional plane miles. It seems to me that the assumptions respecting early receipt of B-131 aircraft, B-331 aircraft and CV-880 aircraft, would have meant simply earlier inauguration of additional services for TWA and that our use of assumptions which imply an adoption of the historical average stage length for those particular types of aircraft for each aircraft's first full year of operation, are just plain unquestionable.

As to the assumption of the six additional B-331 inter-continental aircraft, this would have meant a small addition to the domestic operation in terms of plane miles. I think it is perfectly reasonable to assume that those additional plane miles would have been [Tr. 10,673] operated in the same general schedule pattern as the B-331 plane miles were actually operated in the Domestic Division.

Wemple—Rebuttal

The CV-880 aircraft assumption representing a fleet of 30 rather than a fleet of 20, is the assumption which produces the largest amount of additional plane miles.

As I mentioned before in a discussion of load factor, we did schedules analysis for the CV-880 in some detail, both for the fleet of 20 and for the operation when TWA had a fleet of 26 and found quite uniform usage of those particular type of aircraft.

As I mentioned under the load factor discussion, that uniform usage is also confirmed by the uniformity of annual average stage lengths which in the year 1963 had an average stage length that was 93 per cent of the average stage length for the year 1961.

Therefore, I concluded it is perfectly reasonable to assume that the CV-880 additional flight miles, as a result of the assumption of a fleet of 30, would have been operated in the same general scheduled pattern that TWA did operate its CV-880 fleet.

Q. You were said, sir, to have made a fundamental error, according to Mr. Simat's testimony, through your [Tr. 10,674] use of average historical, that is, experienced, passenger yields. My reference is to Page III-5 of his original report.

Will you comment on that so-called fundamental error, please?

A. Yield, which is a passenger revenue in terms of cents per passenger mile, is a developed figure. It is not a cash register reading. Each year TWA and its independent public accountants make a study and determine the amount of revenue which TWA shall record as income from the transportation of passengers.

The study is important and complex because people pay for transportation in a wide variety of plans and manners.

Wemple—Rebuttal

They buy tickets on time. They buy tickets through travel agents who some time are very slow in paying the money along to the airline. They use tickets for travel on TWA which are obtained from other airlines and for trips which involve two airlines, where the total price of the ticket must be split with other airlines.

They buy on air travel cards, on time payment plans and so forth.

TWA and its independent public accountants determined the proper revenue figure to be taken as [Tr. 10,675] passenger transportation income for the year. That revenue figure is then divided by a figure that comes from operations reports, a figure of revenue passenger miles recorded for all of the flights operating and the result is called "yield," which is cents per passenger mile.

We examined a number of yield figures which were used internally by TWA and we concluded that none of them was suited for our use for these particular estimates.

We have more recently done a study whereby we took the traffic on-board reports for transcontinental piston flights, I think it was Flights 3 and 4, as they were operated in February 1959, and we put a price which was the fare each of those passengers paid, divided it by the number of passenger miles and figured an income per passenger mile figure.

We did the same thing for TWA's non-stop transcontinental jet flights, 1 and 2, which were operated in April 1959 and we determined that the money paid to TWA per passenger mile on the jet was, I believe, .5 cents higher than it was on the piston, which is about a 10 per cent higher figure.

We did the same kind of an analysis for travel between New York and Chicago on TWA in June 1960 on piston air-

Wemple—Rebuttal

craft and on jet aircraft and we came up with [Tr. 10,676] a similar higher figure per passenger mile for the jet travel, of about 5/10 or 6/10 of a cent, which again is about 10 per cent.

During the period 1959 to 1963, TWA's average yield went up. I believe it was about—correction. Let me not guess. Let me look it up. TWA's average yield per passenger mile in 1959 was 5.487 cents. In 1963 the yield figure was 5.845 cents.

I believe that the jet surcharge and the higher price that the passengers paid for jets was certainly a factor in causing TWA's yield to increase.

I would like to point out that our revenue estimates do not claim any additional revenue for TWA passengers who would have shifted from piston aircraft to jet aircraft for their transportation as a result of TWA being able to operate more jet aircraft, replacing piston aircraft, with the earlier and additional jet deliveries.

Our additional revenue calculation is limited to revenue for what I call the net additional passenger miles that would have been recorded by TWA as a result of having the additional jet flights and in this we used TWA's overall average yield. We did not make any adjustment for the jet surcharge which passengers would have paid.

[Tr. 10,677] I believe our use of this overall average figure for our revenue calculations, is the very best system that I know of for doing such revenue calculations.

Q. In the course of that answer, Mr. Wemple, you referred to an examination of revenues, yields, in flights between New York and Los Angeles in February and April 1959 and for flights between New York and Chicago for June 1960.

Are the computations behind the statement of the results that you made there, available?

Wemple—Rebuttal

A. They are now. I believe my associate has them and will provide them for you.

Mr. Tenney: In the event the defendants wish the computations, we will provide them for you.

Mr. Hayes: You may indulge the assumption that they do.

Mr. Perkins: There were other analyses and studies referred to and I don't know if what you referred to referred to everything that Mr. Wemple referred to in his testimony.

Mr. Tenney: I believe they did, but I will ask Mr. Wemple.

By Mr. Tenney:

Q. Were there any analyses that you referred to [Tr. 10,678] or intended to refer to, other than the ones I have just mentioned, that the work papers have not hitherto been made available to defendants?

A. The only new analysis is the one which we just finished up this morning, the work papers of which my associate has now available to you.

Mr. Hayes: I believe Mr. Wemple mentioned some study made by TWA and their outside accountants, too. There was some reference to it.

Q. Would you briefly explain what you intended to refer to by that reference?

A. Each year towards the fall of the year TWA and its independent public accountants review data on income and ticket revenue in very considerable detail and from this review they determine the revenue figure which shall be taken by TWA and shown on its books for income from transportation of passengers.

Wemple—Rebuttal

Q. And this is the published yield figure that is produced annually?

A. This is the revenue figure which is published in TWA's annual reports.

Q. And you did not intend to refer to any other study other than that which is in the normal course of business performed by TWA and its public accountants [Tr. 10,679] annually?

A. That's correct.

Mr. Tenney: I am simply trying to make clear there is no separate study and so there are no papers that we can produce for you.

Q. Your fourth fundamental error, so-called, in Mr. Simat's report of last fall, relates to the manner in which you have produced your cost estimates, Mr. Wemple. My reference there is to Page III-5 of Mr. Simat's report last fall.

Will you comment on that error, so-called, Mr. Wemple?

A. I've prepared a study and calculation for the purpose of determining the nature and amounts of the change in operating expense which would result from acceptance of costing theories of Simat, Hellieson & Eichner and of the traffic and revenue analysis which I have adopted.

Mr. Tenney: Mr. Wemple, if you will pause for a moment, I will have this document marked for identification as TWA Exhibit 449 for identification. It is headed "TWA v. Hughes. Alternative Calculation of Changes in Domestic Division Operating Expenses Using SHE Estimates of Available Unit Costs, [Tr. 10,680] Costing Units and Cost Categories and C & C Estimates of Changes in Traffic, Revenues Jet and Piston Service."

Wemple—Rebuttal

This document consists of three typewritten pages to which are attached a large number of sheets containing the breakdown of the figures and I ask whether it would be desired that we include these attached sheets as part of the exhibit or simply designate them as work papers. Copies, of course, are equally available to counsel for defendants. I ask which Mr. Brownell would prefer and which the defendants would prefer.

Mr. Perkins: My preference would be to limit it to the summary sheets here and just submit those as work papers and if it is necessary to offer them in evidence, we will offer them on cross.

The Special Master: Fine.

Mr. Tenney: So Exhibit 449 for identification should only include the three typewritten sheets that I described. The remaining papers are not to be considered as part of the exhibit.

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[Tr. 10,681] * * * Q. Is the document which has been marked TWA Exhibit 449 for identification, the study that you have just now referred to?

A. It is.

Q. Would you explain this exhibit, please?

A. As set forth on page 2, the first paragraph of this exhibit, for these alternative calculations we have used the SHE costing units which were listed in SHE report Volumes I and II. We have also used the SHE statements on TWA variable unit costs which are costs per block hour, et cetera, which we took from work sheets which were furnished with SHE Volume B. We have applied these unit costs to our estimates of changes in passenger traffic and in revenues. And we have set forth our estimates from our report, Volume I.

Wemple—Rebuttal

The result of this alternative cost calculation is set forth on page 3 and it gives a total figure of \$91.5 million of additional operating expenses for the assumptions for which we have made estimates in our Volume I, as amended, by TWA Exhibits 42 and 43 and Defendants' [Tr. 10,682] Exhibit 262.

This figure of 91.5 million may be compared with the figure produced by our system of calculation of 94.9 million. There is a \$3.4 million difference.

Accordingly, if we had used the SHE system of calculating operating expenses, we would have produced an improvement in gain from operations of 67.4 million rather than the figure we did produce of 64.0 million.

Accordingly, I believe the difference between Mr. Simat's preference for calculating operating expenses and my system, is of no practical importance to this discussion.

Q. What then does account for the substantial difference between the results of your estimates and the results of the computations made by Mr. Simat, if it is not costs?

A. Mr. Simat's estimates are based upon substantially different numbers of revenue block hours than result from our estimates. Different numbers of departures. Different numbers of piston plane miles deleted. Different numbers of stewardess block hours.

Those are the reasons for the difference which occur to me at this moment, to answer your question.

Q. Can they be summarized as a difference in [Tr. 10,683] operating patterns?

A. In the main, yes.

Q. It is also true, of course, is it not, that there are differences in the estimations by you and by Mr. Simat of how many additional passengers would be carried on these various assumptions?

Wemple—Rebuttal

A. That's correct, and also the amount of revenue that would be associated with those additional or lesser passengers.

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Q. This point relates to a statement by Mr. Simat in the course of redirect at transcript 10,456-58, in which he states that, "On-line" passengers in the New York to Los Angeles market for the period 1959 to 1963, in the New York-San Francisco market in the period 1959 to 1962, generally decreased.

Do you recall that testimony, of Mr. Simat's?

[Tr. 10,684] A. Yes, I do.

Mr. Tenney: You may recall, Mr. Hayes, that there was an exhibit produced, I believe, in connection with that, although I don't have the exhibit number.

Q. Will you comment on that phenomenon described by Mr. Simat, please?

A. It was my observation that during the period 1959 to 1963, the airlines providing coast-to-coast service, as they got jet aircraft, were able to substantially improve transcontinental service from points other than New York; that prior to the jet aircraft and, of course, during the early period of jet operations, coast-to-coast service was superior between New York and Los Angeles and San Francisco and I believe that many people from places such as Boston, Philadelphia, Washington, and so on, traveled to New York to make their transcontinental trips; that as the coast-to-coast service improved between, for example, Boston and the West Coast, people, of course, began taking flights from the Boston area.

Wemple—Rebuttal

To review the figures, I have prepared this tabulation of data taken from the CAB competition studies.

Mr. Tenney: I ask that this sheet headed "TWA v. Hughes, Transcontinental Passengers, 1959- [Tr. 10,685] 1963," be marked as TWA Exhibit 450 for identification.

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Mr. Tenney: TWA Exhibit 450 for identification, having been produced since the time when we gave to the defendants copies of the other exhibits we have had marked, has not previously been given to them, but we are at this time furnishing them with copies and if there are any work papers with respect to it, of course, they will be available. It's actually simply a takeoff. Well, I should not say what that is.

Q. Mr. Wemple, is TWA Exhibit 450 for identification the document you were just now referring to?

A. It is.

Q. Will you explain how it was produced?

A. The upper part of the tabulation lists pairs of cities. An East Coast city on the left and a West Coast city on the right of the column headed "Segment." The East Coast cities are New York, Boston, Philadelphia, Washington and Baltimore.

The West Coast cities are Los Angeles and San [Tr. 10,686] Francisco.

The figures under each column heading 1959 through 1963 are taken from the CAB competition study and they are the total on-line passenger traffic between those pairs of cities.

You will note that the New York-Los Angeles, between 1959 and 1963, actually showed a 1 per cent decrease. New York-San Francisco, a modest 10 per cent increase. However, if you take the transcontinental subtotal you will find

Wemple—Rebuttal

that the total of all this coast-to-coast travel increased 17.5 per cent between 1959 and 1963.

The lower part of the table is included for interest. It shows that with the New York to Chicago to West Coast travel also included the increase for all the segments listed is 18.6 per cent during this same 1959 to 1963 period.

Q. May I ask on this, what carriers are covered?

A. All of those carriers providing transcontinental service, New York-Chicago—all the carriers providing coast-to-coast service, which, of course, is TWA, United and American and any other carriers whose traffic would have been listed in the CAB study as traveling coast to coast.

Q. You have included, then, all passengers listed as [Tr. 10,687] traveling between these two pairs of points by the CAB competition studies on whatever carrier?

A. Yes, to the best of my knowledge, that is how it has been put together.

Mr. Tenney: I offer in evidence, the documents which have been marked as TWA Exhibits 443 through 450 inclusive, which are the documents that Mr. Wemple has been testifying with respect to this afternoon.

Mr. Perkins: In addition to the general objection that has been made to the whole line of testimony and the exhibits offered up to this point, we also object to these until we have had an opportunity to examine them and cross examine Mr. Wemple with respect to them.

(TWA Exhibits 443 through 450 for identification, inclusive, received in evidence, as of this date.)

Wemple—Cross

Mr. Tenney: I have no further questions of Mr. Wemple at this time and he is available for cross examination.

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[Tr. 10,735] Mr. Perkins: I ask the reporter to mark as Defendants' Exhibit 378 for identification a cover page of the CAB report entitled "A Study of the Domestic Passenger Air Fare Structure," and pages 210 through 236 from that report which comprise the letter from Mr. Barch that I just referred to.

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Mr. Perkins: Excuse me. I apparently didn't mention the important point that Mr. Barch was a vice president of TWA.

Mr. Tenney: May I ask whether a copy of the entire report is available?

Mr. Perkins: Yes, if you would like to see it (handing).

Q. At the bottom of page 211, Mr. Wemple—

A. Excuse me, Mr. Perkins, I don't—

Q. The numbers are at the top of the page.

—Mr. Barch states with reference to disparities between fares in north-south directions as opposed to east-west directions and I quote:

[Tr. 10,736] "Data from the present fare structure study also illustrate this condition in the spread between the fare per mile and rate per mile curves resulting from computed fares developed by application of the standard regression formula (Y equals A plus BX) applied to an appropriate sample of existing fares. Exhibit 1 attached, illustrates the disparity between the directional curves."

Wemple—Cross

Turning to Exhibit 1, I particularly direct your attention

to—

A. Excuse me, Mr. Perkins. Which page of Exhibit 1?

Q. The first page of Exhibit 1.

A. I have it.

Q. You will note that for jet first class and jet coach, Mr. Barch has computed rates per mile for north-south and east-west directions varying in the case of jet first class from 18.89 cents per mile on segments of 100 miles down to 7.24 cents on segments of 1,900 miles or longer.

I also call to your attention pages 4 and 5 of Exhibit 1 in which he has charted the rates per mile which he has developed from a regression formula showing how the rate declines as the segment length increases.

[Tr. 10,737] I ask you whether this is not an appropriate method of estimating what fares would be at different segment lengths.

Mr. Hayes: You mean yields?

Mr. Perkins: Fares or yields.

Mr. Tenney: I don't see how the witness can be asked to glance at a document of this length which he has never seen before and expected to answer as to whether a particular table appended as an exhibit to one of the appendices represents an appropriate method of doing anything at all.

He has had no opportunity to determine what is really involved in this study, let alone what methods were applied.

I believe that this question is not one that any witness can be expected to answer under these circumstances.

[Tr. 10,738] Mr. Perkins: I don't know about any witness, but if Mr. Wemple does not know, he can certainly say he does not know.

Wemple—Cross

The Special Master: You have not had an opportunity to study this?

The Witness: I have never seen this report.

The Special Master: I don't see how he can answer it intelligently.

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【Tr. 10,672】 Q. In TWA Exhibit 444, you have tabulated for all aircraft types by year, 1959 through 1963, the historical seat miles for TWA, United and American, and your estimated additional TWA seat miles shows the per cent additions by TWA, and you have also shown those same percentages—you have also shown percentages for the relationship between the estimated additional TWA seat miles and TWA's historical seat miles.

In connection with that exhibit, you stated at page 10,646 that these percentages show that your estimated additional jet seat miles cannot possibly be characterized as introducing jet capacity into a market in unlimited quantity.

【Tr. 10,763】 This testimony is in relation to your using the average load factor for each type aircraft in the year in estimating the added or deleted traffic additional or deleted aircraft.

In your report, you did not indicate any percentage increase where it would no longer be appropriate to use the average stage length, did you, Mr. Wemple?

A. If you refer to our report dated—

Q. TWA 4C?

A. Yes.

Q. Yes?

A. (continuing)—I don't recall for Domestic Division operations any percentage increase in seat miles figures in here at all.

Q. But—

A. If I understand your question.

Wemple—Cross

Q. In applying your procedure of estimating additional traffic by using the average load factors, you nowhere in your report, as I recall, stated any percentage increase in capacity beyond which that would not be an appropriate way of estimating, did you?

A. I believe my answer properly is that is correct.

Q. Did you have any limitation in mind at that time?

[Tr. 10,764] A. No.

Q. I think here you mention that the highest in any year is 13.6 per cent. That is related to TWA's miles.

I would assume that you think it is certainly appropriate within that percentage to use the average load factor to estimate.

A. I believe I have so stated.

Q. Do you think there is a limit anywhere, or is it an unlimited quantity?

A. No, I would not say that TWA can add jet capacity in unlimited quantity in a market, without affecting the load factor. I am afraid I do not understand your question and I am, therefore, puzzled how to answer it. Perhaps I can ask you to rephrase it or repeat it to me.

Q. You have said that Mr. Simat was in error in charging you with an error in applying the average load factor to additional capacity in unlimited quantity.

If that is true, there must be some quantity beyond which you could not do it. I am asking you do you have in mind or have you ever had in mind some quantity beyond which you would not go? Have you ever considered this?

A. Yes, I have considered it. I do not have a [Tr. 10,764[A]] quantity in mind because the assumptions that we were given for these particular estimates did not involve, to use Mr. Simat's terms, introducing jet capacity into the market in an unlimited quantity.

Wemple—Cross

So, I had no occasion to determine what might on a theoretical basis be a point at which you were to get into the thing that would be characterized as "unlimited quantity."

Q. You would not be able, in your opinion, to state any number where this principal—100 per cent or you have no—

A. I am not prepared with any number. A great many things are involved in the operation of an airline.

If one were to—TWA started off with essentially, as I remember, one transcontinental flight between New York and Los Angeles the very early part of this 1959 jet operation.

I believe it is perfectly reasonable to expect if they could have started off with three transcontinental flights instead of one, all three of those still would have been filled right up to the hilt; so that the load factor achieved would have been extraordinarily high in spite of an apparent tripling of jet flights.

This is the reason that I cannot give a pre- [Tr. 10,765] cise answer to that very broad question, as to what comprises "unlimited quantity."

Q. By the way, you state at the bottom of page 10,643 running over into 10,644, that this schedule which is TWA Exhibit 444 was developed to show the magnitude of the net increase in jet service.

At page 10,645 you say it shows the net additional jet miles which you estimate TWA would have operated.

Is that really what this exhibit shows, Mr. Wemple, the net additional jet miles?

A. The words "seat miles" should have been there rather than "jet miles."

Q. Let us add "seat miles," and I repeat the question.

A. Yes. I believe this exhibit does show the estimated net additional jet seat miles in comparison with TWA, United and American's total seat miles in the broad market served by those three airlines.

Wemple—Cross

Q. What do you mean by "net additional jet seat miles"?

A. It is fundamental to our estimate that we estimated, as I have mentioned a number of times before, that a certain amount of the additional jet aircraft [Tr. 10,766] availability would have been used for direct replacement of piston aircraft flights and seat miles.

Over and above that direct replacement is the part which I call net additional jet seat miles.

Q. So this is the net—

A. Correct.

Q. (continuing) —it is not the added jet miles; it is the net over the deleted piston miles?

A. Over the piston miles replaced.

Q. Over the piston seat miles?

A. That is correct.

Q. But in your estimating, you estimated separately for added jet miles and deleted piston miles, did you not? You used separate load factors?

A. We calculated—yes, we used separate load factors for jet seat miles and piston seat miles, that is correct.

Q. The jet seat miles were not always added in the same markets where the piston seat miles were deleted, were they?

A. The total jet seat miles, as I have said before, served two different purposes. One was the direct replacement of piston seat miles and the other was a—what I have called a net addition.

[Tr. 10,767] Now, insofar as being in the same general markets are concerned, if you mean markets as pairs of cities, yes, they were in the same general markets, pairs of cities.

Mr. Perkins: I ask the reporter to mark as Defendants' Exhibit 379 for identification a sheet entitled "Various Comparisons of Wemple's Jet Seat Miles Added (Domestic) With Historical Jet Seat

Wemple—Cross

Miles Flown (Domestic)," to which are attached three pages of work papers.

.

By Mr. Perkins:

Q. This tabulation, Mr. Wemple, in Column 3 shows that TWA assumed jet seat miles added in each year for each type of jet aircraft and in Column No. 4 it shows what percentage that was of the total jet seat miles flown by TWA in that year, and in Column 5 the percentage is related to the total seat miles flown with that type of aircraft.

There are other percentages which show what the total jet seat miles added—the percentage relationship [Tr. 10,768] with the total of American Airlines, United, American and United together, and all three of the trunks.

First, I direct your attention to this particular total—this Column 4, the percentage of the total jet miles added to the total TWA seat miles operated on jets in that year, which is 63.2 per cent, and the relation with American—

A. I am sorry, Mr. Perkins, I did not follow that last one.

Q. In Column 4 under 1960 opposite total 63.2 per cent.

A. I see your point. I was looking at the wrong year.

Q. The percentage of the total added jet seat miles in that year is 43.1 per cent of what American was flying and 56.6 per cent of what United was flying.

I ask you, in your opinion, could TWA have introduced capacity in those percentages at the average load factors for jets?

A. Yes, I believe they most certainly could. And I think in order to understand the reasonableness of my answer, you must take into account the number of jet aircraft that each of those airlines was operating in those years.

Wemple—Cross

[Tr. 10,769] Your Exhibit 342 shows that TWA, American and United, number of jet aircraft assigned to service, Domestic Division in the year 1959 for the big three was 245.

In the year 1963, the number of jet aircraft these three used for Domestic Division service was 201.

By the—correction—so that the 1959 number is 12 per cent of the total number that those three airlines were able to use effectively in 1963, when they finally had that number of aircraft available to use.

It would have been a perfectly marvelous thing for TWA to have been able to double the number of aircraft, jet aircraft it had in 1959 and it would have given TWA a tremendous competitive advantage, I believe, over the position that it did find itself in in comparison with the other airlines.

[Tr. 10,770] Q. My question—

The Special Master: The other airlines were restricted in their supply, too, weren't they?

The Witness: And particularly United which in 1959 was suffering from the delay of the DC-8 deliveries.

Q. My question was not directed at this point—I think I will come back to it later—to 1959 and 1963, but I was asking just about 1960, the percentages shown in Defendants' Exhibit 379 for identification, and I just wanted your opinion whether additional seat miles could have been operated in those percentages at the average load factor?

A. My answer has been yes, I believe they could, and I point out to you that much of this assumed TWA jet seat miles which is listed here is for direct replacement of piston seat miles.

Wemple—Cross

So that the—there was a block of passenger traffic already there just ready to move into TWA's better aircraft.

Q. Just looking at 1961 under column 5 for the CV-880s, you will notice that your assumed additions result in doubling the 880 capacity which would have been operated in that year, and I take it your answer [Tr. 10,771] would be the same with respect to that if I asked you the same question?

A. Yes, it would be, Mr. Perkins, and as I pointed out the other day, the CV-880, traditionally throughout the period, ran a higher average load factor than all aircraft operated by TWA in a particular year.

So my answer is yes.

Q. I think you did testify that you selected your average load factors as typical of particular types of jets because in your opinion they were operated in a manner characteristic with that type of jet.

A. I think I would have said it that TWA's operating plan assigned certain—correction—assigned various types of aircraft, jet aircraft, to characteristic service. And in my opinion they would have assigned the additional aircraft of that same type to the same characteristic service in a particular year or a particular period.

Q. Even if the capacity was doubled?

A. In this instance, certainly, even though the availability number of seat miles was doubled.

Again, a part of those available seat miles would have been replacing piston seat miles in the same service.

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[Tr. 10,784] . . . Q. Returning to TWA Exhibit 447, is there some reason for your breaking off these dotted lines showing monthly average load factors for each type of jet after the introductory period?

Wemple—Cross

A. Plus three months.

Q. Plus three months. Excuse me.

A. It simplified the chart, and it was intended to show initially that after the first few months at the very beginning of introduction of a new type of jet fleet the load factor pattern became similar, generally, to the pattern of all aircraft being operated by TWA in that period.

The Special Master: I remember your testimony on that. I couldn't understand why that should be so.

Is there any explanation for that or is that just another historical fact?

The Witness: I think it shows and is a reflection of the fact that—or the situation that load factor is influenced by a great many things.

[Tr. 10,785] There are seasonal variations in load factor. There is environment, that is, competitive situation developments that affect load factors.

And those things which affect TWA's overall load factor also very promptly begin to affect the new jets as they are brought into the fleets.

That was all I was trying—intending to show by this.

By Mr. Perkins:

Q. Of course, the average load factor is in part made up of the jet load factor, isn't it, that you show?

A. A very small part in the early period. A larger part—

Q. A much larger part in the later period, right?

A. That's correct.

Q. For any of these you have not charted what happened after the introductory period plus three months?

A. Not on this particular chart.

Wemple—Cross

Q. You have not done it previously?

A. I have done it. I did not retain it.

It was a monstrous looking chart because it had so many lines on it.

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[Tr. 10,786] Q. I note, Mr. Wemple, that in each case these average monthly load factors are declining quite rapidly, for the 131s and for the 331s and for the 880s, not for the 720s. Don't you think it would have been of interest to see what happened to these load factors as time went on?

A. I have studied them.

Q. But you have not shown them here?

A. They have not been included in this chart.

The Special Master: Isn't the reason you did not include them basically because after this three-month period generally they stabilized at about the same thing for all types of equipment, the same pattern?

The Witness: Each type of equipment seems to have its characteristic pattern, that is correct. There are some exceptions to that, as you go from one end of the period to the other, but that is generally true.

Q. In your opinion, Mr. Wemple, as these various new fleets were introduced and added to TWA's overall capacity, is it your opinion that they would have had any affect on the average load factors achieved by the existing fleets?

[Tr. 10,787] A. Of the specific type?

Q. Well—

A. Again, I'm sorry I don't understand your question. Does your question relate to a specific type or does it relate to an introduction of an additional aircraft of a particular type affecting the overall load factor? Of course, my answer to the latter is yes.

Wemple—Cross

Q. For instance, as the 331s were introduced in the domestic service, would that have any affect upon the load factors obtained by the 131s which had previously been introduced? And repeating that question again, would the introduction of the CV-880s which you have shown here in 1961, in your opinion, did that have any effect on the average load factors obtained by the existing 131s and 331s?

A. I would have no reason to believe that they would have.

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[Tr. 10,797] Q. Comparing the figures for the transcontinental subtotal for 1960 and 1961, there was an absolute decline in the transcontinental traffic, and while it picked up again in 1962, it still didn't come back to the 1960 level. That's the 1,337,000 in 1962 compared with 1,042,000 in 1960, only slightly above the 1959 figure of 1,273,000.

If, as you say, these improvements in service took place in 1961 and 1962, how do you explain the fact that the transcontinental traffic for all of these segments didn't improve at all in those years, but declined?

A. I believe you just recited what is quite obvious, that in all of those years it was somewhat higher than it had been in 1959, and that the improvement which had the effect was probably complete for the majority of 1963, which represents the overall effect.

This exhibit, of course, was offered in comment on Mr. Simat's statement which related to changes between 1959 and 1963, and that is what this exhibit is offered with reference to.

Q. You have no other explanation of why with the addition of these other services in 1961 and 1962 the total traffic declined from 1960?

A. I have made no study of that particular aspect [Tr. 10,798] of the thing of the intervening years details.

Wemple—Cross

Q. With respect to the percentages in 1963, have you read or listened to the testimony of both Mr. Simat and Mr. Eichner at various times that in 1963 there was a general improvement in traffic?

A. Yes, there was a—I am familiar with the fact that there was a general improvement in traffic in 1963.

Q. Isn't that the explanation for the improvement increases in 1963 rather than these additional services?

A. I am sure that the general increase in domestic travel is reflected in the 1963 figures as well as the improved service for the other than New York-East Coast cities.

Q. Mr. Simat's testimony not only related to the absence of any increase in traffic over that period, but he also related that historical fact to the changes in capacity offered in those markets during that period.

Did you make any similar study of the changes in capacity for the transcontinental segments listed in TWA 450?

A. I am sure there were more seat miles offered in 1963 than there were in 1959, and that they were primarily jet seat miles, the increase was in jet seat miles.

And as I mentioned before, the airlines found [Tr. 10,799] it profitable to operate at lower load factors, because their break-even point was so much further down, and this is the way the airlines operated, including TWA in that period, with additional seats in 1963 compared to the number they operated in 1958 and 1959.

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**Excerpts From Testimony at Damage Hearing
of John C. Biegler**

[Doc. 554-19]

[Tr. 6314] * * * Q. In any case, I believe you testified that you received no suggestions on the draft from any of the other experts?

A. I testified that we received no suggestions as to the draft of our report or the form of our report from the other experts, yes, sir.

Q. But the draft was reviewed by Cahill and you received suggestions from them?

A. Yes, it was reviewed by Cahill, and we did receive suggestions relating principally to format, arrangement of the material, not to the calculations or form of the financial statements.

Q. Did you adopt these various suggestions?

A. Some we did, some we didn't. Most of them we did, because they did improve the—we felt they improved the arrangement and the readability of the report.

Q. But it is your testimony they did not relate to the substance of the report or any of your conclusions?

A. I would say that any suggestions they made did [Tr. 6315] not relate to matters of substance, conclusions in our report.

Q. When was the report completed in the form as finally submitted on May 2nd?

A. I think it was completed probably the morning of April 28th.

Q. And delivered immediately to Cahill, I assume?

A. As quickly as it was bound.

Q. And to the other experts at that time, too?

A. I do not recall whether we circulated that to the other experts or not.

* * * * *

Biegler—Cross

Q. Mr. Biegler, do you know whether prior to the time that you were retained there had previously been another accounting firm retained to help in the preparation of the damage case?

A. I have no knowledge of it.

Q. At that April 8th meeting, were there presented to you any pro forma statements—

[Tr. 6316] A. No, sir.

Q. —of what the assumed financials would be?

A. No, sir.

Q. There were not?

A. No, sir.

Q. You started from scratch, in other words?

A. Yes, we started without—with nothing on paper but we discussed the general concept of our work.

Q. What is your understanding, Mr. Biegler, as to the purpose of this reconstruction that you were asked to do by Cahill Gordon?

A. Well, we were advised that there was a damage proceeding.

We were supplied as information at the very early stages with a copy of the complaint, which gave us a general idea that there was a proceeding and what it was roughly all about.

And it was our understanding that what we were attempting to do is to apply to the historical financial statements the effect of certain assumptions which were to be given to us to show what the financial data of TWA reconstructed might have looked like if these assumptions were applied.

Q. You understood then that this would be used as [Tr. 6317] an instrument for measuring the damages to be claimed by the plaintiff in this case?

Biegler—Cross

A. I don't know that we were ever given that precisely. We were asked to indicate what the difference would be between the actual TWA results during this period and what they might have been or would have been if these assumptions had been applied to them. And the difference, of course, is a matter for our client to use in whatever way they felt appropriate.

Q. You speak of this difference between the historical and reconstructed.

You were measuring this difference, and did you understand that this difference as computed by you would constitute a major part of the plaintiff's damage claim in this case?

A. I don't know how to put it, sir, in any other way than to say that we applied these assumptions to the historical financial statements and came up with a difference to be used by our client in whatever manner they chose to. I have no control over the decision as to how they use this information.

We did what we were instructed to do.

[Tr. 6318] Q. I understand that you had no control over what they would do with it. I think my question related to your knowledge or understanding of what they would do with it after you had computed it.

Mr. Williams: Can you add anything to what you have said?

The Witness: I don't believe so.

Q. To be specific, if you would turn for a moment to page 5 of Volume I, and the items listed under, or next to Capital A, as I understand it, relate to your reconstruction in the first paragraph, page 1. You show certain figures which add up to 84 million dollars described as the increase in stockholders equity before income taxes.

Biegler—Cross

My question is whether you understood that this increase would be claimed as damages by the plaintiff.

A. At the time we were preparing this report and developing this information, we, of course, did not know whether the—whether our client would claim this amount or not.

We were asked to do as I described before, certain things.

But in view of the fact that we understood the general nature of the assignment and what might be the [Tr. 6319] end use, we, of course, arrayed this data in such a form as to bring out the effect of the application of these assumptions on a basis of effect before income tax. But as to—as I said before, as to how this would be used by our client, we did not know at the time we prepared this report.

Q. Did you ever engage in a reconstruction like this before, Mr. Biegler?

A. I have never engaged in a reconstruction like this before.

Q. Judging from the—what was it, 22,000 man hours that—I don't know if that is the right figure—that went into it, I gather this was not a simple or easy task.

A. In terms of volume of detailed work, it was not a simple, easy task. There was a lot of detail to deal with. It did involve a lot of man hours.

Q. If you will turn back to page 1 again, please, Volume I, the first paragraph states that in accordance with your instructions you prepared these data for the period September 30, 1955, to December 31, 1963.

Whose decision was it to use this particular period for the reconstruction?

[Tr. 6320] A. It was our client's decision.

Biegler—Cross

Q. That was—

A. Cahill Gordon.

Q. —not your decision in any way?

A. Not to my knowledge, no.

Q. Did you have any discussions with your client about the period that should be used for the reconstruction?

A. We may have had discussions at our earliest meetings to define the scope of the project.

And I'm sure, while I cannot recall the specific terms of those discussions, the dimensions of the project were set out and they related of course to the work of the other experts which ran—as to my recollection, really span, taking them all together, span this period, September 30, 1955 to December 31, 1963.

Q. Did you ever try any other period?

A. No, sir, never tried any other periods.

Q. Do you have any opinion of your own as to whether this period is or is not an appropriate period for this work of reconstruction?

A. I do not have any opinion other than the fact of what you might call the input is confined to this period in terms of the data derived from the reports of [Tr. 6321] the other experts and the assumptions supplied to us.

Q. Your starting point here is September 30, 1955.

Is this the point at which the historical TWA and reconstructed TWA first diverge?

A. On the basis of the assumptions given to us, this is the first balance sheet where you see a divergence.

Some of the assumptions which were given to us which are derived from the Drexel Harriman Ripley report deal with changes which were assumed to have taken place several months before September 30th, but they have—they were given effect to in the September 30th balance sheet.

Biegler—Cross

Q. How about the closing period of December 31, 1963?

I think you testified that this was in your opinion appropriate only as it coincided with the inputs that you received from the reports of the other experts, is that—

A. Well, I said that that was the last date which would be affected by the input of the other experts in terms of reconstruction of the annual results of operations.

Q. You say that is the last—I am sorry.

A. Well, the last input we received was with respect to results of operations. There were some changes in the [Tr. 6322] 1963 results as a result—from the Coverdale & Colpitts report.

Q. But this is not a point at which historical and reconstructed TWA come together again, is it?

A. I—you will have to define for me what you mean by come together.

There were certain things that were historical and reconstructed so far as I could see that could never come together at any date.

Q. That is right. Once you have started them on their divergent paths, there are certain effects that will persist after December 31, 1963, and be reflected on the balance sheet, is that correct?

Even if you assume no other inputs, there would be balance sheet differences that would persist if you went on and did it for—suppose you took the income statements and the balance sheet for—the income statement for 1964 and the balance sheet at December 31, 1964. There would certainly be differences in historical and reconstructed then, would there not?

The Special Master: You mean such as interest on outstanding securities, things of that sort?

Mr. Perkins: Interest, costs, depreciation.

Biegler—Cross

[Tr. 6323] A. Well, I believe the existence of two different debt structures at December 31, 1963, would lead to a variation in interest charges from then on reconstructed vis-a-vis historical.

So far as other elements, such as operating income and expense, I would have no basis for judging whether that would be any different or not.

Q. But at least it is conceivable that there would be effects persisting after December 31, 1963, as a result of inputs relating to an earlier period—

A. I have—

Q.—in addition to what you said about the debt structure?

A. There would be a difference between reconstructed and historical in terms of depreciation charges in the future.

.

[Tr. 6367] . . . Q. I think my question is, you have adjusted the historical data, you have reconstructed them in accordance with certain assumptions that have been given you, and you have computed a difference—in this particular case it is the difference of 123.1 million over this period as of December 31, 1963.

Do you have an opinion as to whether it is fair to compare an historical with an assumed situation on the basis of assumptions and to compute that at a cutoff date when the effect of the assumptions may be to continue after that date?

Mr. Williams: That's rather a complicated question.

I think I will object to the form of it. I think it can be broken up and restated, but it is rather confusing.

Biegler—Cross

The Special Master: I understand what you are trying to get at. There may be continuing effects after December 31, 1963 and does that affect the validity of—

Mr. Perkins: On the basis of the assumptions.

[Tr. 6368] Q. I just wondered whether you have an opinion as to whether in comparing—we are engaged here, as I understand it, or the work you—you have done is really to compare an actual historical situation with an assumed situation on the basis of a number of assumptions that have been given to you.

You have computed differences as they stand at a certain cutoff date, December 31, 1963.

My question was whether you have any opinion as to whether it is fair to make a comparison of this kind when the effects of those assumptions that you have been working with may persist after that cutoff date.

Mr. Williams: Do you understand the question?

The Witness: I understand the question.

Mr. Williams: The first question is is it fair.

Mr. Perkins: No.

Mr. Williams: You argue it later but the basic question is is it fair to compute it this way.

Mr. Perkins: My question, sir, is [Tr. 6369] whether he has any opinion on that subject, whether he cares to express an opinion of any kind.

Mr. Williams: The question is do you have an opinion as to whether it is fair to compute this the way you did, taking the cutoff date that you did.

The Witness: I believe that applying the assumptions as given to us over this period results in a fair presentation of the difference in results for this period.

Biegler—Cross

I have no opinion as to what the on-running effect might be at some future date insofar as operations are concerned.

Mr. Perkins: I think you have answered my question.

Q. You said it is fair for the period, but you express no opinion beyond the period.

A. Because my engagement—the terms of my engagement terminated insofar as this work was concerned on December 31, 1963, insofar as reconstruction of the financial statements are concerned.

Q. I think I understand your answer, sir. I hope I do.

A. You are asking me, sir, about something I have [Tr. 6370] no opinion on because I have no idea what the effects would be that you are referring to. It is something I have never considered.

Mr. Williams: You mean after the cutoff date?

The Witness: That's right. I have given it no consideration.

Q. My question was in a hypothetical form, if there were such effects whether you had an opinion whether it would be fair to use a cutoff date.

Mr. Williams: If there were such effects?

A. I would prefer, sir, not to answer a hypothetical question of that type because I do not know what my instructions would have been under hypothetical situations.

Q. That figure of 123.1 million—I am now back at Exhibit 2, the upper righthand corner—if you can also put another finger on page 5 of Volume I, and in that tabulation there there is a figure of 71.7 million showing the effect of application of assumptions to increase in income and special items.

Biegler—Cross

The 123.1 million is a figure which, as I understand it, is going to come down to this 71.7 million after you have subtracted whatever is appropriate to subtract, is that correct?

[Tr. 6371] A. That is correct.

Q. Mr. Mallender tells me there may be some other additions, too.

A. Whatever needs to be done to arrive at 71.7 from the 123.1, yes, sir.

Q. In any case, looking at Exhibit 2, the first thing you do is subtract the historical and reconstructed provisions for depreciation and obsolescence, and from the increased gain you subtract the increase of depreciation of 47.9 million, is that correct?

A. Yes, that's correct.

Q. Again these depreciations figures are summarized from the annual figures in 2-1, and the source of the annual figures in 2-1 is Schedule F in Volume II, is that correct, sir?

A. That is correct, sir. Section F.

Q. Section F?

A. Yes. It is shown on the last page, page 2 of Schedule F.

I am referring to the grand totals that are shown on Exhibit 2.

Q. On the second page of Exhibit F, the totals are those shown in the third and fourth columns, is that correct?

A. That is correct, sir.

[Tr. 6372] Q. The assumptions with respect to the provisions for depreciation and obsolescence are stated beginning on page 8 of Volume II?

A. Yes, sir.

Biegler—Cross

Q. Paragraph 1 states an assumption derived from TWA's historical policy, and perhaps this is an assumption for which you take responsibility, do you?

A. I believe that if you will refer to the first page of our report on Volume I, I say in order to maintain consistency between the reconstructed and historical financial data, the adjustments which reflect these assumptions on the historical financial data for the period were made on bases which correspond in all material respects with the accounting methods, which was an agreed term of our project.

The reason was to minimize deviations between reconstructed and historical which might be injected by using different accounting methods. And I think what we are trying to say is we didn't use a different system of depreciation on the reconstructed airline than we did on the historical.

Q. I see nothing wrong in that. This was basically your agreed approach?

A. It was basically our agreed approach with our [Tr. 6373] client.

If our client had instructed us to do something differently we would have done it for this exercise.

Q. You would have?

A. Yes, sir.

Q. Then, of course, all the remaining assumptions under Paragraph 2 there have the same character as the ones we have been discussing before. They are part of input that you have used in computing reconstructed depreciation?

A. Yes, sir.

Q. Following Schedule F, we have Schedule F-1.

Schedule F-1 shows the historical and reconstructed depreciation by fleet, does it not?

Biegler—Cross

A. Yes, sir, it does.

Q. If we look at the 331s, the second line, which shows reconstructed 18 and historical 12, we see that the reconstructed depreciation naturally is considerably greater in every year beginning in 1959, and that difference continues, and in 1963 the reconstructed figure is 11.4 million as against an historical figure of 7.6 million, a difference, if my math is right, of 3.8 million.

Have you computed what that difference would be in 1964 or subsequent years?

[Tr. 6374] A. I have not.

Q. Is it your opinion that there would be a substantial difference in 1964 and subsequent years?

A. Well, I would—I prefer not to answer these questions by some sort of roundhouse approach, but if you wish to take '64 it would be my guess assuming the same 18 aircraft that we would have probably the same difference with respect to that particular fleet, assuming they had 18 at the end of 1964.

Q. You said previously—

A. But that is not—you are asking me to give you an answer without actually calculating it out and I hope that you accept that on that basis.

Q. I understand.

That would also be true, would it not, of the 880s, the fourth line, CV-880s, new, and they are reconstructed as against 20 historical, and in every year beginning in 1960 the reconstructed depreciation is substantially greater than historical, and in 1963 reconstructed is 12.5 million as against 7.8 million, a difference of \$4.7 million.

Your opinion would be, realizing you have not done any computation, that there would be a substantially similar difference in 1964, based on those same assumptions?

Biegler—Cross

[Tr. 6375] A. I believe it is reasonable to assume that if in 1964 we continued with a 50 per cent larger fleet of new Convairs, 20 against—30 against 20, that the charge for depreciation on this larger fleet of Convairs purchased new, would be something comparable to the difference in 1963.

Q. On those same assumptions, a difference would persist until they had been reduced down to their residual values?

A. Presumably until you followed it through. It wouldn't be necessarily on an annual basis because of difference of timing of aircraft coming into the picture.

Q. But this is an effect of the assumptions that would persist after 1963, is it not, in your opinion as an accountant?

A. Well, if you wish to isolate a particular item—

Q. That is what I am doing—

A. You are asking to take just depreciation—

Q. Yes, just depreciation.

Mr. Williams: One at a time. The reporter can't possibly get you both talking.

Mr. Perkins: I am sorry.

[Tr. 6376] Mr. Williams: What were you going to say, Mr. Perkins? You were asking a question.

Mr. Perkins: I believe the witness said if you want to isolate it as to particular items such as depreciation, and I said, yes, that's exactly what I was doing.

Mr. Williams: All right, then you finish.

The Witness: Well, I think my answer was that if you are dealing solely with depreciation as we are here, the answers that I gave, dealing solely with that aspect of cost and operation, my answers are probably—are fair.

Biegler—Cross

Q. I understand that and I was trying to be very specific here, take some figures that were identified and isolated in your report.

A. Yes, sure.

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[Tr. 6389] • • • Q. Now if you will please turn to Schedule B in Volume II, this again deals with reconstructed long term debt and shows the additions, the assumed additions to that debt throughout the period you are dealing with, is that what this does?

A. That is correct. Additions on a reconstructed basis starting from zero.

Q. If you will look at the first column you will see that the—or I should say I see that under the Series A notes the total amount of 170 million was taken down prior to the end of 1958, and after that, there is no change in that balance, is that correct?

A. That is correct.

Q. As to the Series B notes in the second column, the entire amount was taken down—I am not sure I am reading this right—in 1960, is that it, so that the ending balance—

A. A portion was taken down in 1959 and a portion was taken down in 1960.

[Tr. 6390] Q. So that at the end of 1960 the ending balance was 90 million and after that that remained the same.

Then in the fourth column, subordinated debentures were assumed to have been issued in 1959 in the amount of \$60 million. So that the balance there was 60 million at the end of 1959, and after there is no change.

So, after 1960, as you look across there, there are no further changes of any kind whatsoever in the reconstructed debt, is that correct?

Biegler—Cross

A. That is correct.

Q. Is that an assumption derived from the Drexel Harriman Ripley report?

A. The Drexel Harriman Ripley report ends insofar as financing is concerned, with December 31, 1960, and the terms of the flight equipment mortgage notes that are included in their financing do not call for any further—any reductions under their terms through December 31, 1963.

The sub-assumption C, if you want to call it that, of the basic assumptions—these detailed assumptions that you are referring to on page 6, give you the basis for no other changes in the debt financing program.

Q. You mean in reading Schedule B, I have to consider that enumerated assumption C on page 6 is part of [Tr. 6391] the assumptions that underlie Schedule B, is that correct?

A. Yes, sir.

Q. I will transfer my question and say where in the Drexel Harriman Ripley report do you find the assumption that the debt financing program referred to in assumption B—that's the program that they recommend—is to be considered as a substitute for the entire amount of debt financing both long term and short term reflected in the historical financial statements except for minor amounts.

A. You will not find that, sir, in—directly in Drexel Harriman Ripley's report.

Q. Where did the assumption come from then?

A. It came as a result of discussion of the whole problem of constructing these financial statements, discussions with our client, Cahill Gordon.

Q. They gave you that assumption?

A. Yes, sir, they did.

Biegler—Cross

Q. Did you discuss the basis for any such assumption with them?

A. We may have at the time. I don't recall the details of our discussion.

Q. But the Drexel Harriman Ripley financing as I understand it is a program that carries you through [Tr. 6392] December 31, 1960, is it not?

A. That is correct.

Q. You have carried that program through December 31, 1963?

A. We have carried this program through, and we have eliminated the historical program, whatever program there was in 1961, 1962 and 1963, that's right.

Q. You have assumed, have you not, that had the Drexel Harriman Ripley program been carried out, no further long term financing of any kind would have been entered into by reconstructed TWA in 1961 or 1962 and 1963?

A. The application of the assumptions that were given to us clearly bring out that there are—that by assumption C that there were no additional financings in 1961, 1962 or 1963.

Q. I understand that, but that assumption is one you got from counsel, is it not?

A. That is correct.

Q. That is not an assumption that you can find in Drexel Harriman Ripley anywhere?

A. No, sir, it is not.

Q. Mr. Biegler, would you please turn now to Schedule E-3 of Volume II?

[Tr. 6393] A. Section—

Q. E.

This schedule is entitled "Reconstructed and Historical Additions and Transfers to Flight Equipment."

Biegler—Cross

Over in the left hand column we have a description first of a piston fleet and underneath that of a jet fleet.

As we proceed across this schedule from left to right we see year by year the historical and the reconstructed capital expenditures for each type of airplane.

Is that what this represents?

A. Expenditures transferred to the flight equipment, yes, sir.

Q. Transferred to flight equipment?

A. Yes, sir.

Q. I note looking at the jet fleet that for both reconstructed and historical you have fifteen B-131s, and then you have reconstructed eighteen 331s as against twelve 331s historical, and you have eliminated five 331Bs from the reconstructed, and you have thirty 880s reconstructed as against twenty 880s historical, and you have eliminated six 880s used from the reconstructed and as to all of those I recognize that they are derived from [Tr. 6394] the various principal and enumerated assumptions.

But we go on from there and we find in both columns of reconstructed and historical eighteen 131Bs, four B-720Bs described as leased, and two B-331Cs described as leased, and they have a double asterisk which says the reconstructed and historical amounts are assumed to be identical.

In addition there is a reference to B-727s and B-331Cs which a footnote describes as aircraft on order as of December 31, 1963.

My question is that as to those aircraft for which there were additions to the flight equipment fund where the reconstructed and historical amounts are assumed to be identical, from where do you derive the assumption that those amounts would be identical?

Biegler—Cross

A. Well, if you are not given an assumption that there is to be a change, the only thing that we can do is leave it the same way as it was historical.

We were given no assumption to change these figures. Therefore, we left them as they were.

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[Tr. 6409] • • • The Special Master: Are there any preliminaries this morning?

Mr. Williams: Mr. Special Master, before Mr. Perkins goes on with his cross-examination, I have something which I would like to mention.

[Tr. 6410] Since we recessed on Tuesday, I have learned from Mr. Biegler that for his own assistance he had prepared what is really a condensed summary of his report. He has prepared it, really, for his own assistance, but we found it so helpful to us that I thought I would offer a copy to Mr. Perkins and a copy to you.

It adds absolutely nothing to the facts and figures contained in the report, but it is the sort of thing that might be used by way of summary to help a person understand the rather voluminous and complicated report.

The figures, as I say, are all found in the report, but it isn't easy for a layman to understand how they fit together without a summary analysis.

I asked him to bring it this morning with the thought that it might be of service to you, Mr. Special Master, and to Mr. Perkins, and if you wish, I will offer it in evidence as TWA Exhibit 50, or we can mark it for identification, or you can use it yourself. I don't care.

Biegler—Cross

Mr. Perkins: I have no objection to its being admitted into evidence, subject to our verification that these figures are all identifiable from [Tr. 6411] the report and properly correspond with what you have there.

Mr. Williams: I will then offer it in evidence as TWA Exhibit 50.

The Special Master: Received.

Mr. Perkins: I might add, Mr. Williams, it might have been very helpful if something like this had been included in the report at the outset.

Mr. Williams: We didn't know it ourselves.

(Document entitled "Condensed Summary of Effect of Application of Assumptions," marked TWA Exhibit 50 in evidence as of this date.)

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[Tr. 6438] * * * Mr. Perkins: I might say at this point, your Honor, and this is really not to be construed in any way as a criticism of Mr. Biegler or his firm, that I am sure they have presented this reconstruction in probably the best way that they could, and I have no opinion on whether there is any better way to do it.

I just wanted to state for the record that it is not a very easy document to understand, digest and analyze. If you look for the inputs that come in from the other experts, you do not see them right away. They all suffer a kind of "sea change," and I realize that had to be in the way that the witness did it.

I just want to say what perhaps is clear, that it was difficult for us to understand.

Biegler—Cross

We had to retain our own accountants, and I don't think they understood it right away, either.

As of January 15th, they had accumulated some—nothing like 22,000 hours, but 600 hours in [Tr. 6439] the process of testing, analysis and looking at the work papers.

Naturally, in that process they did not have the time to verify whether the figures in the work papers were properly entered from the various books and ledgers in Kansas City.

We have no reason to doubt that they weren't put down accurately and properly, but we don't know it. We have not been able to verify it, and in that sense we relied on the figures in the work papers just as Mr. Biegler has relied on the audit of Haskins & Sells.

Again, there is no reason to suspect error in either case, but we just don't know. And whether any of these amounts will ever become material or not to check them out and verify, I just don't know, but I would like to say we would like to reserve that right in case at some future date it does become material.

Mr. Williams: Your Honor, I have no objection to their reserving a right of that sort, but I do think since they have had since last May, we should have some advance notice in case they do wish to do any verifying, so we will be prepared [Tr. 6440] for it.

Mr. Perkins: You will have all the notice we can possibly give you, Mr. Williams, I assure you. I doubt if it will be necessary, but at this point I just don't know.

Biegler—Cross

By Mr. Perkins:

Q. On page 5 of Volume I, Mr. Biegler—

The Special Master: Before you get into that, as I understand it, the only thing you are reserving is in case you run across some instance from now on where you believe that there has been a mistake in the figures, that you reserve the right to call that to my attention.

Mr. Williams: That is my understanding of what counsel said.

Mr. Perkins: We have examined the work papers. We have no way of knowing for sure whether the figures in the work papers are accurate. We have not been able to test that. I say we assume they probably are accurate.

But if the need should arise to test those figures against the books, ledger, invoices or what not in Kansas City, we would like to reserve the right to do so.

[Tr. 6441] The Special Master: I wouldn't want to approve a reservation which would extend the time for bringing the hearings to a conclusion. It is perfectly all right with me for you to reserve the right, if you run across, in the ordinary course of your study, mathematical errors or a prima facie mistake in the figures, you certainly will have the opportunity to call that to my attention and make such verification as you need.

Mr. Perkins: I don't think we have in mind anything that would contemplate prolonging the proceedings, but, I think at this point I am not sure just how much of what's in here will be material,

Biegler—Cross

and there may be some things in there which in the time we have had to date it has simply been impossible for us to verify through our accountants.

By Mr. Perkins:

Q. On page 5 of Volume I, Mr. Biegler, up to now we have been discussing how you got to the 71.7 million of increase in income and special items before provisions for income taxes.

Underneath that, you have a further item of 12.3 million described as an increase in capital surplus.

[Tr. 6442] You have a further statement about that particular item on page 6,—

A. Yes, sir.

Q. (continuing) —where you say that this particular increase is accounted for by the difference between the net proceeds of the assumed 1955 equity financing, and the proceeds of the historical equity financing in 1957, and that historical financing is one that you have eliminated in accordance with your instructions; is that right?

A. That is correct, sir.

Q. The enumerated assumptions underlying what you have done here are stated in Schedule A of Volume II on page 13. They are recapitulated on page 13.

A. Page 13?

Q. 13, after Tab A. I think that sets forth what I have just stated to you. And again where No. 3 there says that the later sale is to be eliminated "as a consequence" of the 1955 equity financing. That phrase "as a consequence" does not express your own personal views, but is simply part of the assumption, as given to you, is it not?

A. It is my understanding of the assumption, yes, and it is also my interpretation of the Drexel, Harriman, Ripley report. This was the way I understood it.

Biegler—Cross

[Tr. 6443] Q. It is your interpretation of their report—

A. Yes, sir.

Q. (continuing) —but not your own independent assumption?

A. I am not—no, sir, it is not an independent assumption.

The Special Master: I wonder if we could have a little more discussion of that 12.3 million figure. I am not sure I understand that.

By Mr. Perkins:

Q. Under paragraph 1 there you say that the assumed issue is to be sold at 17.50 per share on June 1, 1955, and then there is a description of the use of the proceeds.

By the way, Mr. Biegler, wouldn't the effect of this June 1st equity issue show up in the balance sheet of June 30th?

A. The balance sheet at June 30th?

Q. The TWA balance sheet at June 30th would—

Mr. Williams: 1955.

Mr. Perkins: 1955, thank you.

Q. (continuing) —reflect the effect of this transaction, would it not?

A. If there had been a balance sheet reconstructed [Tr. 6444] as of June 30, 1955, and this transaction had taken place, I would expect to see it in that balance sheet, yes sir.

Q. Wouldn't you assume that reconstructed TWA like historical would have had a June 30, 1955 balance sheet?

A. Well, they most certainly would have.

Q. But you did not choose to do it that way; is that—you chose to start with September 30th?

Biegler—Cross

A. That is right, because those were our instructions to start with September 30th and to apply the effect of these assumptions which were given to us by Drexel, Harri-man, Ripley, the effect of those assumptions to the Sep-tember 30, 1955 balance sheet which was supposed to give us our starting point for this project.

Q. That was given you as your starting point?

A. Yes, sir, it was.

Q. Going back to page 6, then, we have the proceeds of the assumed equity financing of 55.5 million, and that is simply money that came in from the shareholders, is it not?

A. It is money that came in from the buyers of those shares, yes, sir.

Q. They were shareholders after—

A. After they bought them, I assume they would be.

Q. If they were not previously. They did not take [Tr. 6445] up their rights.

That is also true of the historical financing of 43.2 mil-lion? That is simply money contributed by people who were or became shareholders at the time they contributed the money to the corporation?

A. That is right.

Q. Some of that you classified as an earned surplus of \$12.3 million.

I think if we turn to Exhibit—

Mr. Williams: Did the Special Master ask a ques-tion about the 12.3 million?

The Special Master: Yes.

Mr. Williams: You understand, your Honor, what that is? The theory, I assume, is that because of the higher price at which the shares would have been sold in 1955, the corporation would have real-

Biegler—Cross

ized \$12.3 million more than they did, in fact, realize when this same number of shares was sold in 1957.

The Special Master: Is that considered an element in your damages?

Mr. Williams: Yes.

The Special Master: In the face amount of 12.3 million?

Mr. Williams: Yes.

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[Tr. 6463] . . . Q. $5\frac{3}{4}$ per cent is, I think, stated in the assumptions, Assumption 1 on page 4, that this was an assumption supplied to you by your client, the use of an interest rate at $5\frac{3}{4}$ per cent and it states that that is the coupon rate on the long-term debt issue closest to December 31, 1963.

Did you suggest that particular interest rate to your client?

A. I did not.

[Tr. 6464] We asked our client what rate to use in this calculation of discounted present value, and this is the one that resulted from our question, assumed external borrowing rate.

Q. Is there any particular reason to use this rate rather than some other rate, or is it just an arbitrary—

A. Well, I think if you were looking for an external borrowing rate, you probably would look at the latest borrowing prior to the date we are dealing with by historical TWA, and this makes—made a—frankly made a lot of sense to me, if you were going to use an external rate.

And if you look at Exhibit I-B, you see that the $5\frac{3}{4}$ is the—is the rate on the issue that, as we discussed earlier this morning, the issue that was effected in 1963.

Biegler—Cross

Q. Isn't it true that this measure that you have made here is primarily used as a means of evaluating alternative uses of particular capital?

A. I don't know—I don't really understand your question, Mr. Perkins.

Q. It is an estimating tool, is it not, used by the management of a company in deciding whether certain uses of capital might be more profitable than other uses [Tr. 6465] of capital?

A. Might be. I don't know.

Q. You do not know that?

A. No, sir.

Q. How about the December 31, 1963 date, was that a date you used on counsel's instructions?

A. It certainly was a date that was agreed to between counsel and ourselves. It was the terminal balance sheet date.

We had reached the point where we had reconstructed TWA and had the effect of the reconstructed operations. It was the date that we would be expected to make this kind of a calculation.

Q. You did not give any consideration to what might have happened after that date?

A. We did not under this calculation, no, sir.

Q. Did you consider it under any other calculations?

A. The only thing that—where any consideration was given to what might have happened after that date was a supplemental calculation where we were asked to assume conversions of debentures. You will note that the assumption which was given to us here is that there are no conversions of debentures.

Q. Right, yes.

[Tr. 6466] A. And we were asked by counsel to also make a calculation of what the effect on this present value

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calculation would be if we assumed that the convertible debt—we were given assumptions. We were told to assume that the historical convertible debt was converted when it was, and that we would assume that the reconstructed convertible debt was converted at the same time. I believe you have a memo in your file of papers which describes that matter.

We did make the calculation. It is in our working papers. It is in the working papers supplied to Arthur Young.

Q. From what you said I assume that you know that all of the debenture issue of 1963 was converted prior to the time that you undertook this assignment?

A. Well, I don't recall the actual dates of conversion that were ascertained for the purpose of that supplemental calculation which is not a part of my report. But I do believe that it was some time in 1965.

I don't know that—I can't tell you whether it was before our engagement or not without referring to the precise dates.

Q. It was converted prior to the time that you submitted your calculation of present value, was it not? [Tr. 6467] I believe you said—

A. Well, yes. It must have been before May 2, 1966, yes, sir, if it was in 1965.

Q. What is your opinion of the appropriateness of submitting a calculation of present value as of December 31, 1963 of debt which includes an amount of \$38.5 million which prior to the time you make the calculation no longer exists?

A. I think it is justified by the assumption that was given to us here that there are no conversions of debentures.

If we had been making this calculation in point of time on December 31, 1963, you certainly could not assume conversions that had not occurred.

Biegler—Cross

The Special Master: What troubles me a little bit is to call it historical.

The Witness: Well, it is historical, sir, as far as the position at December 31, 1963 is concerned.

Q. Let me ask you this to clarify that: It would be possible, would it not, if you had a building with a lease and fixed rentals over a period of, say, 20 years, it would be possible as of a date to calculate the present value of the rentals that you would receive over that [Tr. 6468] period, would it not?

A. Yes, sir, it would.

Q. You could calculate those, say, as of a date December 31, 1963?

A. Yes, sir.

Q. You might receive those instructions on January 2, 1964, and you could perform that calculation, could you not?

A. Yes, I could.

Q. On January 1st, that building might have been, let us say, destroyed by a tidal wave or some uninsurable risk. It would still be possible for you on January 2nd to calculate the present value of those rentals as of December 31, 1963, would it not?

A. Yes, sir, it would.

Q. That is comparable to what you have done here, is it not, analogous?

A. I think you are—I don't quite see your analogy the same way that you do, sir, but I will accept it for the way I understand it.

Q. If you see it differently, explain the difference to me.

A. Well, the fact is at December 31, 1963, these debentures did exist, they were convertible, and we had [Tr. 6469] no basis for assuming conversion—you know we

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can't look into the future insofar as the reconstructed TWA and—

Q. When you made this calculation it was no longer the future you were then in the present, were you not? That's why I think the analogy holds.

A. At the time that you made the calculation you knew that this debt which you were computing as of December 31, 1963 no longer existed in the form in which it is set forth in your assumptions?

A. Well, that is correct, we did know that, yes.

Q. I concede that your assumptions certainly justify what you have done, but I am wondering about what justifies the assumptions. Do you have any opinion on that?

A. I believe that these assumptions were reasonable ones to make a calculation of the present value of the debt on an historical basis at December 31, 1963.

Q. You have no opinion as to whether it would be appropriate to use that computation for the purpose of damages in this lawsuit at a date which is now several years later than December 31, 1963?

A. As I think I have indicated before, the question of whether this is used for a claim of damages is out of my particular field, sir. We have made certain calculations [Tr. 6470] and made some measurements of positions at various dates and so on.

But as to whether that item should or should not be in a specific claim for damages, I have no opinion. That is a legal matter.

Q. Are you also aware, Mr. Biegler, that—to identify it, let us turn to Exhibit I-B in Volume I.

A. At the top of the righthand column under historical, there is an amount of \$100 million as the amount of subordinated income debentures, 6½ per cent, due June 1, 1978.

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The footnote at the bottom—I will have to withdraw my question whether you are aware of it because obviously you were.

It says, "Stock purchase warrants originally attached to the subordinated income debentures authorize purchase of 2,700,000 shares of stock at \$20 a share to June 1, 1965 and at \$22 a share thereafter to December 1, 1973."

In your computations of present value at December 31, 1963, did you give any consideration to the exercise of these warrants?

A. I did not, sir.

Q. None had been exercised by that date, had they? [Tr. 6471] Do you know that?

A. I don't know that.

Q. You never did a computation?

A. No, sir, I did not.

In fact, in sending over the material that you requested, the memorandum that refers to some computation on warrants—and I frankly was mystified by its inclusion in the memorandum—we did nothing because we assumed that the gentleman who wrote the memorandum had misunderstood the conversation. It was a totally meaningless thing to me.

Q. The gentleman who prepared the memorandum was from Price Waterhouse?

A. That is correct.

Q. Do you know who it was?

A. Yes, sir, it was Mr. Schwartz who attended that particular meeting that the memorandum refers to.

Mr. Perkins: I think since we have been discussing this memorandum we can mark it for identification.

Biegler—Cross

This is a memorandum for the files, special damage study, with initials at the bottom CBS in caps and signed initials above that and a date of April 19, 1966, two pages.

[Tr. 6472] (Memorandum for the files, special damage study, with initials at the bottom CBS in caps and signed initials above, dated April 19, 1966, consisting of two pages, marked Defendants' Exhibit 265 for identification, as of this date.)

Q. I will ask the witness if this is the memorandum that we have just been talking about.

A. It is.

Q. Paragraph 4 says that Mr. Tenney requested that you prepare another calculation of present value of future payments for historical and reconstructed debt service based on the following assumptions, and Subparagraph (b) thereof refers to all outstanding warrants to be exercised on the same date.

And you have testified that Mr. Schwartz who has initialed the memorandum personally prepared it.

Did you discuss this? Did you see this? Did Mr. Schwartz submit this to you after preparing it?

A. Yes, a copy would have come to me.

Q. Did you read it?

A. I'm sure that I did at the time.

Q. Did you discuss 4B with Mr. Schwartz?

A. I don't know that I discussed it with Mr. Schwartz.

[Tr. 6473] Q. Whom did you discuss it with?

A. I probably discussed it with Mr. Trautlein, my partner.

Q. What was the substance of that discussion?

A. Well, I'm sure that the substance—and I can't tell you because this is an internal office memorandum, just summarizing some broad matters discussed at a meeting,

Biegler—Cross

and I can't tell you what we said but I assume that I would have said, "Well, I don't understand that point. We don't—we couldn't do anything on that."

And I think—

Q. Did you report back to the client? This is a request from your client that you prepare a certain calculation.

A. I probably did not because this was Mr. Schwartz' recollection of a discussion, and he—for all I know there may have been subsequent discussion which might have clarified this point.

Q. But although you were supervising this work, you just ignored this particular request?

A. I would say that we—we ignored it to the degree that it didn't seem to have any relationship to the calculation on the assumption that all these convertible securities would be converted.

[Tr. 6474] And I frankly don't know, sir, how we could inject into the present value calculation the exercise of warrants on stock.

There may be a way, but I personally do not know what it would be.

Q. It does have some relation to the stockholders' equity, does it not? You have reported on the increase in stockholders' equity?

A. As of December 31, 1963, yes, sir.

Q. Any exercise of warrants would increase that equity, would it not?

A. Yes, it would. People exercise their warrants and paying in the additional amount would provide more capital.

Q. Do you have any information as to whether any of these warrants have been exercised and when?

A. I have no information concerning the warrants other than it is shown on Exhibit 1B.

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Q. Returning to Exhibit 265 for identification—

Mr. Perkins: This has been identified by the witness. Perhaps I should offer it in evidence at this point.

Mr. Williams: No objection.

The Special Master: Received.

[Tr. 6475] (Defendants' Exhibit 265 for identification, received in evidence, as of this date.)

Q. On page 2, Paragraph 5 says that Mr. Tenney agreed to your suggestion that you perform an additional analysis of present value giving effect to future income taxes of 50 per cent.

Did you perform this calculation?

A. We attempted to, and quite frankly gave up on this calculation, because we found that it was just impossible to arrive at any sort of an estimate of what an effective tax rate would be based on a statutory rate of assumed 50 per cent, because of such things as accelerated depreciation that would enter into the picture, the investment credit.

And I quite frankly, sir, gave up on this calculation.

Q. So it was never performed?

A. It was never completed. It started and we gave up. Because we just couldn't get the assumptions to make such a calculation.

Q. What occasioned your suggestion?

A. Well, the thing that occasioned it was my concern that if this were to be ultimately used in a damage claim, if it were, and I might—I want to emphasize that—that [Tr. 6476] any amounts that might be received with respect to such a matter as this would probably be subject to tax.

And putting it in its simplest terms would \$20.3 million if that were the amount which were claimed, would that be

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after an effective tax was paid, would that be representative of the differences in present value. That's what started me on the train of thought concerning income taxes.

And, as I say, when I sat down and tried to figure out what you would use as an effective tax rate, I gave up, because there are just too many assumptions to be made, concerning effective tax rates, over the span of years that we are talking about here for a present value calculation.

Q. But you knew that there would be income taxes of some kind, did you not?

A. I did not know that there would be income taxes. There might well have been no income taxes paid over this period of years through the accelerated depreciation allowances. You might have a series of operating losses and then they would be offset against operating income.

I think if you made enough assumptions you might make a stab at this, but I gave up.

Q. You made quite a few so far?

[Tr. 6477] A. That's sort of the assumption I am trying to describe as the sort of assumption that you have to deal with in projecting effective tax rates and I frankly gave up.

Q. But as a realistic matter, if you were weighing—or let me ask you this: Ordinarily in performing these calculations for some managerial purpose, don't you take taxes into consideration? We are talking about how much this—say the debt would be. The interest will be the net effect after taxes, will it not?

A. It will be net after applying the effective tax rate, whatever that is, yes, sir.

Q. Do you ordinarily ignore taxes in trying to measure the present value of future burdens or future income?

A. Well, as I explained earlier, the example that I was thinking of where you had an unfunded liability that you were setting up at present value, we would use the effective

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tive earnings, internal earnings rate after taxes, after the effective tax cost.

You would probably use what ever you consider to be the current earnings rate after taxes, and then the following year as you continue to accrue, you would base it on the earnings rate that year which would be your best [Tr. 6478] measure of—the safest measure of future earnings.

So that I think if you were using an internal earnings as your basis of discounting you would consider after taxes, after actual taxes. We are talking here more or less about cash flow so you can't use statutory rates. You have to talk about effective tax cost.

Q. That would be true in measuring the burden of future interest payments, you would consider—

A. That's true, that's true. The effective tax—the effective cost after taxes of the interest which might be something less than the statutory rate if your effective rate were zero.

Mr. Perkins: I would like to mark for identification as Exhibit 266 copies of supplements to the Schedule B-3 to Form 41 submitted to the CAB by TWA, quarterly—March 31, 1964 is the date on the first one, and then for each quarter after that, to and including the quarter ended September 30, 1966.

(Copies of supplements to Schedule B-3 to Form 41 submitted to the CAB by TWA, first dated March 31, 1964 and ended September 30, 1966, marked Defendants' Exhibit 266 for identification, as of this date.)

Q. These reports show the number of warrants, the total amount of warrants which were exercised during the [Tr. 6479] respective quarters, and the changes in the capital stock account as a result thereof.

Biegler—Cross

The computation which we have made shows that during this period warrants in the amount of \$6,155,960 were exercised.

With that information, Mr. Biegler, do you still consider that it is appropriate for this purpose of this lawsuit, if you have an opinion, to show an increase of 12.3 million in capital surplus reconstructed over historical at December 31, 1963?

A. Well, I have no opinion. Your question is long and complicated, but I really have no opinion on your question.

We made a calculation of reconstructed against historical at December 31, 1963, and covering that period, and that's what the 12.3 million is.

That's all I can tell you, sir. This is information that you handed me here that relates to periods subsequent to that, and I have no opinion on the pertinence of this to what I have—the figures that I have submitted in my report.

Q. There were instances to which you testified in which you sought out information after 1963 for the purpose of your report?

[Tr. 6480] A. There were a few instances, that is correct, for the purpose of my report, yes, sir, but I did not—

Q. You made no inquiry as to future changes in stockholders' equity which had occurred after December 31, 1963, but prior to the time that you submitted your report for the present date?

A. I made no inquiries concerning changes in stockholders' equity since December 31, 1963 for the purpose of my report.

Q. So that what has happened after that date with respect to the capital stock of TWA or the long-term, the historical long-term date as it existed at December 31, 1963, is totally immaterial to the assignment you were given and on which you have reported?

A. I don't know whether it is—you say immaterial. That is a conclusion.

Biegler—Cross

But it is not a matter that I considered necessary to carry out my particular assignment, for me to go beyond 1963.

Mr. Perkins: I would like to offer this in evidence.

Mr. Williams: No objection.

The Special Master: Received.

[Tr. 6481] (Defendants' Exhibit 266 for identification, received in evidence, as of this date.)

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[Tr. 6523] * * * Mr. Sonnett: Mr. Brownell, there are several preliminary matters which I would like to raise bearing on the question of scheduling which I understand you indicated you would like to have discussed this morning.

The Special Master: Right.

Mr. Sonnett: Both of these matters have some relationship to the problem of scheduling from here on out, and subject to the resolution of these [Tr. 6524] two we anticipate that the two witnesses who are called for today would be our last witnesses in terms of the plaintiff's case in chief.

The first relates to Mr. Connelly of Boeing and to his letter to you of February 23, 1967, with a copy to Mr. Hayes and to me, which I take it everybody has had a chance to examine.

It might perhaps be in order to mark it for identification at the moment, so the record reflects what we are talking about.

(Letter dated February 23, 1967, from Mr. Connelly, The Boeing Aircraft Company, marked TWA Exhibit 51 for identification as of this date.)

Mr. Sonnett: Specifically with respect to this, my proposal would be in the interest of saving time that it be stipulated that Connelly would so testify and

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that this be incorporated in the record as part of his testimony.

I don't know what the views of Mr. Hayes on that subject would be.

Mr. Hayes: I have no objection.

The Special Master: We can just take the statement in the record that you made as enough for that. It isn't necessary to have any paper signed.

[Tr. 6525] Mr. Sonnett: I would think if you so direct, it would be admitted for the purpose for which I have offered it.

The Special Master: I will direct it.

(Plaintiff's Exhibit 51 for identification received in evidence as of this date.)

Mr. Sonnett: The other one which I hope we can dispose of equally expeditiously is an effort to eliminate the need for some additional material in the record, and I would like to tender this proposed stipulation to counsel for the Tool Company and to the Special Master, and to request, please, that they read the last paragraph first, because I think this may shorten our problem.

Mr. Hayes: May I inquire what the purpose of the stipulation is? It seems to me to be completely outside the scope of anything that can possibly come before you as Special Master.

Mr. Sonnett: We will argue in due course. The reason for the third paragraph is to avoid the necessity of having argument now. We will argue in due course on the basis of these facts which I think are accurate, the factual material the Special Master is entitled to consider under well settled [Tr. 6526] law—for example, the International Boxing case in the Supreme Court—to consider what the fruits were that the defendants enjoyed by reason of their con-

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duct. And as this indicates, the gain of the Hughes Tool Company out of its own share of TWA stock amounts to roughly \$450 million after payment of expenses.

Mr. Hayes: Whatever the figures are, they seem to have absolutely no relevancy to the issues before you.

Mr. Sonnett: I didn't think you would stipulate relevancy. That's why I put paragraph 3 in. This is a matter for argument.

Mr. Hayes: Suppose they had sold at a loss, would that prove there were no fruits and, therefore, no conspiracy?

Mr. Sonnett: As I say, I don't think this is the time to argue.

Mr. Hayes: No, but you are asking me to sign a stipulation assuming the facts are accurate.

I won't sign a stipulation which has nothing to do with the case.

Mr. Sonnett: I was hoping we could avoid the necessity of calling witnesses to make a record of the simple facts contained in paragraphs 1 and 2 [Tr. 6527] which have been widely publicized, except, of course, two is a figure that we have arrived at which I am sure the Tool Company already has and can verify easily.

Mr. Hayes: I don't see any need even for calling witnesses.

If they call witnesses, it would only delay this proceeding. I would object to their testimony, on the grounds that I have already stated, and then you would be called upon to rule. You can rule just as well on this stipulation, it seems to me.

Biegler—Cröss

The Special Master: Why don't you just make an offer of proof?

Mr. Sonnett: All right, I would like to know whether in this connection counsel for the Tool Company are now prepared to dispute the accuracy—

Mr. Hayes: We would have to check the figures.

Mr. Sonnett: If you do that, at least the record will reflect the correct numbers, whatever the ultimate decision as to relevance and materiality. So I would be quite happy to offer it. I would like to have it marked, therefore, as an exhibit for [Tr. 6528] identification—make it as an offer of proof.

Mr. Hayes: Are these figures before taxes that you set forth here?

Mr. Sonnett: Yes.

As long as we are doing that, I would like to also similarly, on the same basis, have marked and offer the prospectus for the sale of the Hughes stock, dated May 3, 1966.

Mr. Hayes: Same objection.

The Special Master: Mark them for identification and consider them as an offer of proof and I will reserve decision.

(Proposed stipulation marked Plaintiff's Exhibit 52 for identification as of this date.)

(Prospectus re sale of Hughes stock, dated May 3, 1966, marked Plaintiff's Exhibit 53 for identification as of this date.)

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